Supreme Court, U.S.
FILED
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No. _____

In the Supreme Court of the United States

John M. Colosimo,

Petitioner,

v.

State of Minnesota,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether a state may criminally punish citizens for refusing to submit to suspicionless searches and seizures of motor vehicles, boats, or other conveyances used to typically store or transport fish?

TABLE OF CONTENTS

OPINIONS BELOW..... 1

JURISDICTION..... 1

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED.....1

STATEMENT.....2

REASONS FOR GRANTING THE WRIT.....4

A. The Applicability Of The Fourth Amendment's Protections Against Unreasonable Search And Seizure In The Context Of Enforcing Hunting And Fishing Regulations Has Never been Addressed By This Court.....5

B. The Minnesota Supreme Court's Decision Permitting A Search And Seizure Without Suspicion Of Criminal Behavior Violates The Fourth Amendment's Prohibition Against Unreasonable Searches And Seizures..... 7

C. The Minnesota Supreme Court Incorrectly Found That Individuals Have No Legitimate Expectation Of Privacy In Areas Of Boats Or Other Conveyances Used To Typically Store Or Transport Fish..... 9

D. The Minnesota Supreme Court's Holding That The State May Criminally Punish Individuals Who Refuse To Permit Inspections Of Their Motor Vehicle, Boat, Or Other Conveyance Used While Taking Or Transporting Fish, In the Absence of Probable Cause and In the Absence Of Any Limits On The Search, Impermissibly Burdens The Right To Assert One's Constitutional Rights Without Fear Of Criminal Punishment..... 11

CONCLUSION.....12

APPENDIX A: Finding of Fact Conclusions of Law, Verdict and Memorandum..... A-1

APPENDIX B: *State v. Colosimo,* 648, N.W. 2d 271 (Minn. Ct. App. 2002)..... A-6

APPENDIX C: Entry of Judgment and Opinion, *State v Çolosimo*, 669 N.W. 2d 1 (Minn. 2003)..... A-18

TABLE OF AUTHORITIES

CASES

Almeida-Sanchez v. United States, 413 U.S. 266 (1973)....9

Camara v. Municipal Court of City and County of San Francisco, 387 U.S. 523 (1967).....7-8, 9

Chandler v. Miller, 520 U.S. 305 (1997).....7

City of Indianapolis v. Edmond, 531 U.S. 32 (2000).....7, 8

Delaware v. Prouse, 440 U.S. 648 (1979).....5, 6, 8, 9

Drane v. State, 493 So.2d 294 (Miss. 1986)..... 6

Frost v. Railroad Commison of State of California, 271 U.S. 605 (1926)..... 13

Hamilton v. Meyers, 281 F.3d 520 (6th Cir. 2002)..... 6

Hill v. State, 238 So.2d 608 (Fla. 1970)..... 5

Michigan v. Sitz, 496 U.S. 444 (1990)..... 8

Michigan v. Tyler, 436 U.S. 499 (1978)..... 7

New York v. Burger, 482 U.S. 691 (1987)..... 7

People v. Coca, 829 P.2d 385 (Colo. 1992).....5

People v. Levens, 306 Ill.App.3d 230, 239 Ill.Dec.425, 713 N.E.2d 1275 (S.Ct. Ill.1999)..... 5

People v. Perez, 51 Cal.App.4th 1168 (Ct. App. 1996)..... 6

Skinner v. Railway Labor Executives' Assn., 489 U.S. 602 (1989) 8

State v. Boyer, 308 Mont. 276, 42 P.3d 771 (2002).....6, 7

State v. Colosimo, 68 N.W. 2d 271 (Minn. Ct. App. 2002)..... 4

State v. Colosimo, 669 N.W. 2d 1 (Minn. 2003)..... 1, 4, 8, 11,13

State v. Creech, 111 N.M. 490 (Ct. App. 991)..... 5

State v. Kehner, 425 N.W.2d 41 (Iowa 1988)..... 6

State v. Legg, 536 S.E.2d 110 (W.Va. 2000).....5-6

State v. Halverson, 277 N.W.2d 723 (S.D. 1979)..... 6

State v. Larson, 650 N.W.2d 144 (Minn. 2002)..... 11

State v. Tourtillott, 289 Or. 845, 618 P.2d 423 (1980)..... 6

Treasury Employees v. Von Raab, 489 U.S. 656 (1989)... 8

United States v. Martinez-Fuerte,
428 U.S. 543 (1976).....10

United States v.Ross, 456 U.S. 795 (1982).....10

United States v. Villamonte-Marquez,
462 U.S. 579 (1983)..... 8, 10

Vernonia School Dist. 47J v. Acton,
515 U.S. 646 (1995)..... 8

CONSTITUTIONAL PROVISIONS

Fourth Amendment to U.S. Constitution.....1

STATUTES

28 U.S.C § 1257.....1

Minn. Stat. § 97A.251, subd. 1 (3) (2000).....2, 3, 4

Petition for Writ of Certiorari to the Minnesota Supreme Court

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PETITION FOR WRIT OF CERTIORARI

Petitioner, John M. Colosimo, respectfully requests that this court issue a Writ of Certiorari to the Supreme Court of Minnesota to review that court's judgment and opinion entered on October 27, 2003.

OPINIONS BELOW

The Findings of Fact, Conclusions of Law, Verdict and Memorandum of the State of Minnesota Sixth Judicial District Court is unreported (Appendix A, at A-1). The opinion of the Court of Appeals of Minnesota (Appendix B, at A-6) is reported at 648 N.W. 2d 271 (2002). The opinion of the Supreme Court of Minnesota (Appendix C, at A-18) is reported at 669 N.W. 2d 1 (2003).

JURISDICTION

The Supreme Court of the State of Minnesota issued its opinion in this case on September 25, 2003. Judgment was entered on October 27, 2003. The Petitioner is relying in filing his petition on the fact that the Minnesota Supreme Court's decision directly conflicts with previous decisions of the United States Supreme Court. The jurisdiction of this court is invoked under 28 U.S.C § 1257.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the Constitution provides in relevant part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly

describing the place to be searched, and the persons or things to be seized."

The relevant provisions of the Minnesota Statute, § 97A.25 1, subd. 1 (3) (2000): "A person may not... (3) refuse to allow inspection of a motor vehicle, boat or other conveyance used while taking or transporting wild animals."

"Wild Animals" is defined to include "fish". Minn Stat § 97A.251 subd. 1 (3) (2000).

STATEMENT

Petitioner John M. Colosimo, an attorney, was convicted for refusal "to allow inspection of a boat." Minn Stat § 97A.251, subd 1 (3) (2000).

Mr. Colosimo was ending a fishing trip with a law school friend and the friend's two adult children on Rainy Lake at Kettle Falls in the Voyager's National Park on the morning of September 18, 2000. The group had stowed their personal belongings on Mr. Colosimo's open bowed boat in order to make the trip back to the far shore of Lake Namakan where they had left their vehicles. The stowed gear included suitcases, duffle bags, and several coolers in the 19-foot Crestliner boat. Mr. Colosimo's friend was in a hurry to return to the Twin Cities because his new boat and motor had some mechanical malfunctions so he wanted to get back before the dealership closed.

The Crestliner boat, owned by Mr. Colosimo, was being trailered by a truck owned by a National Park licensee along the National Park roadway between Rainy Lake and Namakan Lake. As the portage truck and trailered boat made a loop on the National Park roadway to allow the portage truck driver to back the trailer and boat into the water of Namakan Lake, the occupants of the Crestliner boat observed an unmarked boat tied by its bow to the dock adjacent to the boat ramp. It was a boat used by the Department of Natural Resources. Once the tow truck operator had stopped the truck to unhook the boat, Officer

Lloyd Stein, a uniformed and armed Department of Resources officer, walked toward the truck. He struck up a conversation with Mr. Colosimo who was sitting at the steering wheel of his boat. Officer Stein asked Mr. Colosimo if his group had caught any fish. Mr. Colosimo responded that they had caught some. Mr. Colosimo told Officer Stein that they were in a hurry to go because of mechanical problems associated with his friend's new boat. Officer Stein asked how many fish the group had caught. Mr. Colosimo responded that they had not been fishing that day and had less then their limit. Officer Stein next asked how they had the fish packaged. Mr. Colosimo responded they had gutted and gilled the fish in accordance with the regulations affecting Rainy Lake. Officer Stein asked if he could take a look at the fish. Mr. Colosimo inquired as to why they were being questioned on principle and as a citizen of the United States and the State of Minnesota. Attorney Colosimo asked Officer Stein several times his basis for searching and inspecting the fish, what was his probable cause, and did he have a search warrant. Mr. Colosimo told Officer Stein he would agree to a search if the officer could articulate legitimate and valid reasons for searching the boat.

The armed conservation officer stated that he didn't need a reason as long as he knew there were fish on the boat. Apparently Officer Stein interpreted Mr. Colosimo's principled refusal to consent as an indication of guilt of wrongdoing. The conservation officer then issued Mr. Colosimo a ticket for failing to allow an inspection of his boat pursuant to Minn Stat. § 97A.251, subd. 1 (3).

The state and Mr. Colosimo agreed to a bench trial. A bench trial was held and the court issued Findings of Fact, Conclusions of Law, Verdict and Memorandum [Appendix A]. The court found Mr. Colosimo guilty of refusal to allow inspection of a boat Minn Stat § 97A. 251, subd. 1 (3) and assessed a fine of $100.00 plus a $37.00 surcharge. Mr. Colosimo appealed the conviction to the

Minnesota Court of Appeals. The Minnesota Court of Appeals in *State v Colosimo,* 68 N.W. 2d 271 (Minn. Ct. App. 2002) reversed the District Court, concluding that in order to inspect Mr. Colosimo's boat the officer must have probable cause of a violation of a fish or game law [Appendix B]. The Minnesota Court of Appeals held that because the officer did not have constitutional authority to inspect the boat, Mr. Colosimo could not be convicted for refusal to allow inspection of the boat.

The State of Minnesota appealed the case to the Minnesota Supreme Court. The Supreme Court in *State v. Colosimo,* 669 N.W. 2d 1 (Minn. 2003), reversed the Minnesota Court of Appeals and held that because Mr. Colosimo had no reasonable expectation of privacy, the areas of his open boat or other conveyance used to typically store or transport fish were subject to an inspection pursuant to Minn Stat § 97A.251, subd. 1 (3), [Appendix C]. The court held that an expectation of privacy in all parts of an open boat or other conveyance admittedly used to transport fish is not reasonable. The court held that it was permissible for the conservation officer to conduct a nonconsensual inspection of the area of Mr. Colosimo's open boat, including areas where fish are typically stored or transported. Such areas are subject to inspection pursuant to Minn Stat § 97A.251, subd. 1 (3). The court held that by refusing to submit to the DNR officer's request to inspect all these areas of his open boat, Mr. Colosimo had violated Minn Stat § 97A.251, subd. 1 (3). This petition for Writ of Certiorari is made as a result of the Minnesota Supreme Court holding.

REASONS FOR GRANTING THE WRIT

The privilege of fishing is important but the rights of citizenship are vital. A constitutional right must outweigh a broad, unlimited right of inspection by a conservation officer. No citizen should be criminally punished for not consenting to a search.

A) The applicability of the Fourth Amendment's protections against unreasonable search and seizure in the context of enforcing hunting and fishing regulations has never been addressed by this Court. Generally, the state and lower federal courts that have addressed this issue have protected citizens against unconstrained, suspicionless searches and seizures of the type authorized by the Minnesota Supreme Court in this case.

In his concurring opinion in *Delaware v. Prouse,* Justice Blackmun emphasized that in his view the case did not address the constitutionality of "the necessarily somewhat individualized and perhaps largely random examinations by game wardens in the performance of their duties." 440 U.S. 648, 664 (1979). Since that time, numerous state and lower federal courts have addressed the issue, but it has not been addressed by this Court.

The state and lower federal courts that have addressed this issue have recognized the important government interests in protecting the natural resources of their states, but have also imposed limits to protect citizens from being subject to indiscriminate searches and seizures undertaken at the whim of individual officers.

Several courts have permitted searches or seizures if the officer has reasonable suspicion that a violation of fish and game laws has occurred. See, *e.g., People v. Coca,* 829 P.2d 385 (Colo. 1992) (reasonable suspicion of illegal hunting required before stopping vehicle); *Hill v. State,* 238 So.2d 608 (Fla. 1970) (officers may board ship to view shrimping permit, but may only search or inspect boat with probable cause of violation); *People v. Levens,* 306 Ill.App.3d 230, 239 Ill.Dec.425, 713 N.E.2d 1275 (S.Ct. Ill. 1999) (stopping motorist is permissible only if officer has a reasonable suspicion that motorist presently engaged in illegal hunting); *State v. Creech,* 111 N.M. 490 (Ct. App. 1991) (reasonable suspicion that game laws were violated required for stop by conservation officer); *State v. Legg,*

536 S.E.2d 110 (W.Va. 2000) (same). But see, *Hamilton v. Meyers,* 281 F.3d 520 (6th Cir. 2002) (upholding the right of game wardens to make inspections and conduct searches without warrants when it is clear that someone has been hunting); *State v. Kehner,* 425 N.W.2d 41 (Iowa 1988) (permitting stops of vehicles of individuals "engaged in an activity which may be reasonably interpreted as 'hunting.'").

Similarly, consistent with this Court's decision in *Prouse*, several courts have upheld traffic checkpoints to enforce hunting and fishing law in an effort to limit the discretion of individual officers in the field to make random stops. See, *e.g.*, *People v. Perez,* 51 Cal.App.4th 1168 (Ct. App. 1996) (upholding a traffic checkpoint near hunting areas during hunting season to inspect licenses, tags, equipment, and any wildlife taken); *State v. Halverson,* 277 N.W.2d 723 (S.D. 1979) (upholding game checkpoint stops by DNR officers); *Drane v. State,* 493 So.2d 294 (Miss. 1986) (upholding checkpoint for wildlife and game violations); *State v. Tourtillott,* 289 Or. 845, 618 P.2d 423 (1980) (upholding wildlife checkpoint).

Even in *State v. Boyer,* 308 Mont. 276, 42 P.3d 771 (2002), a case very similar to the present case and relied on by the Minnesota Supreme Court, the Montana Supreme Court was careful to justify the seizure of defendant as based on reasonable suspicion that an offense had occurred. *Id.* at 286, 42 P.3d at 777 ("It is the presence of reasonable suspicion that allowed Jones to proceed with the investigative stop."). The court was further careful to limit the intrusion onto to the boat to the transom, an area it equated to the bumper of a vehicle, and in which the court found the defendant had no reasonable expectation of privacy. *Id.* at 287, 42 P.3d at 778. And finally, the court justified the officer looking into the live well as plain view. The court emphasized the importance of the fact that the officer "did not conduct a search of the boat, look under the

seats, remove or rearrange any personal belongings, or even open the top of the live well." *Id.* at 288, 42 P.3d at 780.

The indiscriminate searches and seizures by conservation officers authorized by the Minnesota Supreme Court in this case place Minnesota citizens at the mercy of the whim of conservation officers and violate the Fourth Amendment's guarantee of freedom from unreasonable searches and seizures.

B) The Minnesota Supreme Court's decision permitting a search and seizure without suspicion of criminal behavior violates the Fourth Amendment's prohibition against unreasonable searches and seizures.

The Minnesota Supreme Court's decision in this case authorizes searches and seizures of individuals absent any suspicion of criminal behavior. By eliminating any requirement of suspicion of wrongdoing, the Minnesota Supreme Court subjects individuals in the state to searches based on an armed conservation officer's whim rather than on suspicion that the individual has engaged in conduct that violates the state's fishing and hunting laws. The court's decision directly conflicts with previous decisions of the United States Supreme Court.

"The Fourth Amendment requires that searches and seizures be reasonable. A search or seizure is ordinarily unreasonable in the absence of indivualized suspicion of wrongdoing." *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000), citing *Chandler v. Miller,* 520 U.S. 305, 308 (1997). While such suspicion is not an "irreducible" component of reasonableness, the Court has recognized only limited circumstances in which the usual rule does not apply. Id. at 37.[1] The Court has been particularly vigilant

[1] The Court has permitted searches for administrative purposes without particularized suspicion of wrongdoing in instances where administrative schemes insured the searches were appropriately limited. See, *e.g. New York v. Burger,* 482 U.S. 691 (1987); *Michigan v. Tyler,* 436 U.S. 499 (1978); *Camara v. Municipal Court of City and County of*

against seizures and searches resulting from an officer's exercise of "standardless and unconstrained discretion." *Edmond,* 531 U.S. at 37, quoting *Delaware v. Prouse,* 440 U.S. 648, 661 (1979).

Although the Minnesota Supreme Court held that the initial encounter with the conservation officer did not amount to a seizure, the court also held, "There may be little doubt that after Colosimo admitted to having been fishing and the fact that he was transporting fish, he was seized by Officer Stein." *Colosimo,* 669 N.W.2d at 4. The court justified this seizure as "not suspicionless" because it was "based on the fact that Colosimo admitted to transporting fish in his boat, but refused to allow inspection of the boat." *Id.* In fact, the seizure and search was "suspicionless" in that the officer had no reason to suspect a violation of the fishing laws—all he knew was that petitioner had been engaged in the lawful activity of fishing and presently was engaged in the transportation of fish, also a lawful activity.[2] Thus, the Minnesota Supreme Court's

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San Francisco, 387 U.S. 523 (1967). Similarly, the Court has upheld brief, suspcionless seizures of motorists at a fixed Border Patrol checkpoint designed to intercept illegal aliens, *United States v. Martinez-Fuerte,* 428 U.S. 543 (1976), and at a sobriety checkpoint, *Michigan v. Sitz,* 496 U.S. 444 (1990). And finally, the Court has upheld "certain regimes of suspicionless searches where the program was designed to serve 'special needs, beyond the normal need for law enforcement.'" *City of Indianapolis v. Edmond,* 531 U.S. 32, 37 (2000), citing *Vernonia School Dist. 47J v. Acton,* 515 U.S. 646 (1995) (random drug testing of student-athletes); *Treasury Employees v. Von Raab,* 489 U.S. 656 (1989) (drug tests for United States Customs Service employees seeking transfer or promotion to certain positions); *Skinner v. Railway Labor Executives' Assn.,* 489 U.S. 602 (1989) (drug and alcohol tests for railway employees involved in train accidents or found to be in violation of particular safety regulations).

[2] Even if the petitioner's principled refusal to consent to the search is viewed, as the Minnesota Supreme Court ruled, as a violation of Minnesota law, it cannot provide suspicion that petitioner was unlawfully transporting fish.

decision permits searches based solely on mere suspicion that an individual has been engaged in the lawful activity of fishing and/or transporting fish, opening the door to searches and seizures at the unbridled discretion of individual officers. As this Court stated in *Delaware v. Prouse*, "This kind of standardless and unconstrained discretion is the evil the Court has discerned when in previous cases it has insisted that the discretion of the official in the field be circumscribed, at least to some extent." 440 U.S. at 661, citing *Almeida-Sanchez v. United States*, 413 U.S. 266, 270 (1973); *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 532-533 (1967).

C) The Minnesota Supreme Court incorrectly found that individuals have no legitimate expectation of privacy in areas of boats or other conveyances used to typically store or transport fish.

The Minnesota Supreme Court's holding that petitioner had no reasonable expectation of privacy in "the areas of his open boat or other conveyance used to typically store or transport fish" conflicts with established United States Supreme Court precedent. While this Court has recognized that the privacy expectation in a vehicle, including a boat, is less than that of a home, it has never held that individuals have no reasonable expectation of privacy in vehicles and boats, thereby surrendering the protections of the Fourth Amendment. In *Delaware v. Prouse,* this Court pointedly stated, "An individual operating or traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and its use are subject to government regulation." 440 U.S. at 662.

This Court consistently has recognized that citizens enjoy an expectation of privacy in containers found within

a vehicle. *See United States v. Ross,* 456 U.S. 795, 822-23 (1982) (concluding that "the Fourth Amendment provides protection to the owner of every container that conceals its contents from plain view."). In upholding a suspicionless boarding of a vessel in waters providing access to the open sea in *United States v. Villamonte-Marquez,* this Court emphasized the fact that "Neither the [vessel] nor its occupants are searched, and the visual inspection of the [vessel] is limited to what can be seen without a search." 462 U.S. 579, 592 (1983) (quoting *United States v. Martinez-Fuerte,* 428 U.S. 54, 558 (1976)).

With its holding that petitioner did not have a reasonable expectation of privacy in "areas of an open boat or other conveyance used to typically store or transport fish," the Minnesota Supreme Court, contrary to United States Supreme Court precedent, has authorized suspicionless searches of packages and containers on a boat likely to contain items that an individual is seeking to keep private.[3]

The mere fact that petitioner was engaged in the lawful activity of fishing or transporting fish cannot strip him of his reasonable expectation of privacy. The Minnesota Supreme Court itself has stated:

> [U]nder our statutory scheme a violation of fishing regulations is a misdemeanor only. Indeed, in the context of the regulatory scheme, it is no more pervasive or comprehensive than the state's traffic rules and regulations, . . . an area of law

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[3] Although in the present case the Minnesota Supreme Court did not specifically delineate the limits of a legal search of an open boat, the court nevertheless permitted a search of areas used to typically store or transport fish. This must include areas not in plain view and presumably includes containers, which are often used to transport fish. In this case, Colosimo told the officer that the party was transporting fish "gutted and gilled in accordance with the regulations affecting Rainy Lake," thus they were likely to be found in closed containers.

> enforcement this court has consistently held may not be initiated without at least a reasonable articulable suspicion of unlawful conduct.

State v. Larson, 650 N.W.2d 144, 153 (Minn. 2002) (finding that citizens have a reasonable expectation of privacy in ice fishing houses).

Thus, the Minnesota court's decision in this case improperly strips petitioner of the reasonable expectation of privacy to which he was entitled in the closed containers within the trailered boat in which he was traveling.

D) The Minnesota Supreme Court's holding that the state may criminally punish individuals who refuse to permit inspections of their motor vehicle, boat, or other conveyance used while taking or transporting fish, in the absence of probable cause and in the absence of any limits on the search, impermissibly burdens the right to assert one's constitutional rights without fear of criminal punishment.

The burden on citizens as a result of the Minnesota Supreme Court's decision permitting indiscriminate searches by conservation officers is exacerbated by the fact that a citizen is criminally punished for refusing to consent to such inspections. The danger of granting "standardless and unconstrained" authority to conservation officers is illustrated by the Minnesota court's holding that the lawful limits of the search in this case need not be delineated. *Colosimo,* 669 N.W.2d at 8 n.4.

In the court's view, because at least some portion of the boat was subject to search, by refusing any search the petitioner was guilty of a crime. *Id.* But how was petitioner to know the search demanded by the conservation officer would be limited to lawful areas? There was no search warrant describing the places to be searched, there were no administrative regulations or guidelines in place to limit the search and, under the court's

ruling, probable cause did not limit or define the scope of the search. The limit the court articulated in its opinion—areas of the open boat typically used to store or transport fish—if adequate, was created by the court and was not in place at the time of the demand to search that led to petitioner's criminal conviction. Petitioner in this case was faced with a demand for a broad, unlimited search of the trailered boat in which he was traveling and the containers on that boat, and was criminally punished for refusing to consent to such a search. This is precisely the type of "standardless and unconstrained discretion" by the officer in the field that the Fourth Amendment was designed to protect against. If Minnesota seeks to utilize suspicionless searches to enforce its hunting and fishing laws, the Fourth Amendment at a minimum requires that such searches be appropriately limited by statute, regulation, or administrative policy.

CONCLUSION

As Justice Page eloquently stated in his dissenting opinion:

> Rather than requiring the state to properly manage Minnesota's wildlife resources, the court has instead decided to grant the state the power to compel the relinquishment of an individual's constitutional right not only to be free from unreasonable searches, but also the freedom to assert one's constitutional right without fear of criminal punishment.
>
> * * *
>
> In upholding Colosimo's conviction, the court forces individuals to choose between waiving their constitutional right to be free from unreasonable searches in exchange for the "privilege" of hunting, fishing, trapping, or possessing wildlife.

* * *

> Today's sweeping decision holding that there is no expectation of privacy in areas of an open boat where fish are typically stored overturns recent precedent and eviscerates the constitutional protection against unreasonable searches. . . . [T]he court's decision has now opened the door for warrantless searches by any peace officer upon the mere suspicion that an individual is [or] has been . . . hunting or fishing. As the Court said in *Frost v. Railroad Commission of State of California,* 271 US 605 (1926), 'It is inconceivable that guarantees in the Constitution * * * may thus be manipulated out of existence.' 271 U.S. at 593-94, 46 S.Ct. at 605.

Colosimo, 669 N.W.2d at 17-18.

For all of the foregoing reasons petitioner John Mark Colosimo respectfully urges this court to grant his Petition for Writ of Certiorari.

Respectfully Submitted,

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APPENDIX A

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF ST. LOUIS SIXTH JUDICIAL DISTRICT

State of Minnesota, No. TX-00-303509

Plaintiff,

vs. **FINDINGS OF FACT, CONCLUSIONS OF LAW, VERDICT AND MEMORANDUM**

John Mark Colosimo,

Defendant.

A court trial was scheduled in above-captioned matter for September 18, 2001. The parties decided to forego the court trial and have the Court render a decision based on written arguments and transcript testimony. Jeffrey M. Vlatkovich, Assistant County Attorney, represented the State. Michael K. Kearney, Attorney, represented Defendant.

Defendant is charged with the following:

Refusal to Allow Inspection of a Boat, in violation of Minnesota Statutes § 97A.25 I, Subdivision 1(3).

Based upon the files and records herein, the Court does make the following:

FINDINGS OF FACT

The attached Memorandum shall constitute the findings of Fact of the Court. Upon the foregoing Findings of Fact, the Court does make the following:

CONCLUSIONS OF LAW

The attached Memorandum shall constitute the Conclusions of Law of the Court.

VERDICT

1. The Court finds Defendant guilty of the charge of *Refusal to Allow Inspection of a Boat*, in violation of Minnesota Statutes § 97A.251, Subdivision 1(3).

2. Based upon a prior waiver of appearance at sentencing, the Court sentences Defendant to a fine of $100.00 plus surcharge, totaling $137.00 payable within 30 days.

Dated this 6th day of November, 2001.

BY THE COURT:

s/_____
Jeffry S. Rantala
Judge of District Court

MEMORANDUM

The remaining charge in this case is an alleged violation of Mine, Stat. § 97A.251, Subd. 1(3). The applicable statutory language states, "A person may not...refuse to allow inspection of a motor vehicle, boat, or other conveyance used while taking or transporting wild animals," On April 13, 2001, a hearing was held upon Defendant's motion to dismiss for lack of probable cause. On May 23, 2001, the Court issued an Order and Memorandum denying Defendant's motion. As the parties have raised no additional fact disputes, the factual summary set forth in the Order and Memorandum is incorporated into this decision.

This case involves essentially two issues. First, was there a stop? Second, did Officer Steen have authority to inspect Defendant's boat once it was established that Defendant had been fishing and was transporting fish?

As previously discussed in this matter, conservation officers are subject to the same Fourth Amendment requirements as other law enforcement officers. It logically follows that conservation officers need reasonable, articulable suspicion to stop a motor vehicle, or boat for that matter. But as the Court found in its earlier Order, there was no stop in the present case. An officer's act of approaching a parked vehicle and talking with the driver does not constitute a stop for Fourth Amendment purposes. State vs. Vohnoutka, 292 N.W.2d 756, 757 (Minn. 1980); Crawford v. Commissioner of Pub. Safety, 441 N.W.2d 837, 839 (Minn. Ct. App. 1989). The testimony of Shawn Obeson, the portage operator, was clear. He stopped on his own volition, not because of anything Officer Steen said or did.

If Officer Steen had actually stopped Defendant, the result would be different. Upon approaching Defendant's boat, Officer Steen had no specific or articulable facts of criminal activity and, therefore, was without legal authority to execute a stop. At this point in time, Officer Steen did not even know, although he suspected, that Defendant and his party had been fishing. It was not until after Officer Steen began conversing with Defendant that it became apparent that Defendant had been fishing and was now transporting fish.

The Court believes that once a conservation officer determines that an individual has engaged in a regulatory activity such as fishing or hunting, the officer has a right to inspect pursuant to § 97A.251. This is the only logical conclusion if fish and game laws are to be enforced. If, as Defendant argues, conservation officers were required to have probable cause prior to inspection, then the regulatory scheme intended by the legislature would lose all force and effect. Fish and game violations, by their very nature, would be extremely difficult and oftentimes impossible to detect if probable cause, or even reasonable suspicion, was required before an inspection could ensue. Therefore, it is both logical and necessary that conservation officers have authority to inspect once it becomes apparent, either through observation or dialogue, that an individual has engaged in a regulatory activity, when Defendant acknowledged that he had been fishing and was in the process of transporting fish, Officer Steen then had the authority to inspect Defendant's boat, Defendant's refusal do allow the inspection constituted a statutory violation.

From a hypothetical standpoint, if Defendant had not indicated his involvement in fishing, then Officer Steen would probably have lacked the authority to inspect. Under this hypothetical, Officer Steen would have had no evidence that Defendant had engaged in a regulatory activity. With the exception of a depth finder, Officer Steen did not observe any

fishing rods, tackle boxes, or other items to show that Defendant and his party had been fishing. For example, the Court doubts that a conservation officer could lawfully inspect the boat of a water skier or recreational boater for illegal fish because, quite simply, water skiers and recreational boaters are not engaged in fishing. The officer would first need reasonable suspicion of a regulatory activity, just as a police officer needs reasonable suspicion to stop a motor vehicle. But once it is determined that fishing or hunting has taken place, the Court believes that a conservation officer then has the authority to investigate, in the form of an inspection, potential fish and game violations.

The Court's decision makes no implication that Defendant was in possession of illegal fish. The Court merely finds that there was a technical violation of § 97A.251 because of the unique circumstances of this case. The Court believes that Defendant refused to allow inspection of his boat out of principle, not because he may have had illegal fish on board. In other words, it was clear from the testimony that Defendant truly believed that the officer could not legally search his boat. Had the officer actually stopped the boat, this would have been true. Having said this, the Court must still reach a legal conclusion. While Defendant is guilty under the statute, the circumstances here warrant only a minimal fine.

J.S.R.

APPENDIX B

Court of Appeals of Minnesota.

STATE of Minnesota, Respondent,
v.
John Mark COLOSIMO, Appellant.

No. C7-01-2181.

July 23, 2002.

Defendant was convicted in the District Court, St. Louis County, Jeffry S. Rantala, J., of refusal to allow inspection of a boat. Defendant appealed. The Court of Appeals, Hanson, J., held that: (1) a boat owner cannot be convicted of the crime of refusal to allow inspection of a boat unless the state can prove that the officer had probable cause to request that inspection, and (2) a boat owner involved in the recreation activity of fishing is only required to allow inspection of his boat while taking or transporting fish when a conservation officer has probable cause that such fish are taken or possessed in violation of game and fish laws; and (3) boat owner's refusal to allow officer to inspect boat did not give officer probable cause to believe that owner had incriminating evidence of fish violations on the boat, and thus, owner's conviction for refusal to allow inspection of boat warranted reversal.

Reversed.

West Headnotes

[1] Criminal Law 1139
110k1139 Most Cited Cases

Appellate review of the district court's denial of a motion to dismiss is de novo.

[2] Criminal Law 1139
110k1139 Most Cited Cases

Whether a statute has been properly construed is a question of law, subject to de novo review.

[3] Shipping 17
354k17 Most Cited Cases

A boat owner cannot be convicted of the crime of refusal to allow inspection of a boat unless the state can prove that the officer had probable cause to request that inspection. U.S.C.A. Const.Amend. 4; M.S.A. § § 97A.215, subd. 1(b), 97A.251, subd. 1(3).

[4] Searches and Seizures 79
349k79 Most Cited Cases

Warrantless searches conducted to enforce regulatory schemes are only reasonable in the context of a pervasively regulated business activity, not a personal recreational activity.

[5] Fish 16
176k16 Most Cited Cases

A boat owner involved in the recreation activity of fishing is only required to allow inspection of his boat while taking or transporting fish when a conservation officer has probable cause that such fish are taken or possessed in violation of game and fish laws. U.S.C.A. Const.Amend. 4; M.S.A. 97A.215, subd. 1(b), 97A.251, subd. 1(3).

[6] Searches and Seizures 171
349k171 Most Cited Cases

The Fourth Amendment gives a person a constitutional right to refuse to consent to entry and search where the officer lacks probable cause; passive refusal cannot be a crime, nor can it be evidence of a crime. U.S.C.A. Const.Amend. 4.

[7] Fish 16
176k16 Most Cited Cases

Boat owner's refusal to allow officer to inspect boat did not give officer probable cause to believe that owner had incriminating evidence of fish violations on the boat, and thus, owner's conviction for refusal to allow inspection of boat warranted reversal. U.S.C.A. Const.Amend. 4; M.S.A. §§ 97A.215, subd.1(b), 97A.251, subd. 1(3).

***272** *Syllabus by the Court*

1. A boat owner involved in recreational fishing is only required to "allow inspection of * * * [the] boat * * *, used while taking or transporting [fish]," under Minn.Stat. § 97A.251, subd. 1(3) (1998), when the conservation officer has probable cause to believe that "[fish] taken or possessed in violation of the game and fish laws are present," under Minn.Stat. § 97A.215, subd.1(b) (1998).

2. Absent probable cause, the boat owner's refusal to allow inspection is not a crime.

Mike Hatch, Attorney General, St. Paul, and Jeffrey M. Vlatkovich, Hibbing, for respondent.

John Mark Colosimo, Virginia, pro se appellant.

Considered and decided by HALBROOKS, Presiding Judge, KLAPHAKE, Judge, and HANSON, Judge.

OPINION

HANSON, Judge.

Appellant challenges his conviction of refusal to allow inspection of a boat, arguing that he was unlawfully stopped by a conservation officer; that the officer did not have probable cause to inspect the boat; and that the officer's request to inspect the boat was an unlawful seizure. We reverse.

FACTS

Pro se appellant John Mark Colosimo, an attorney, and four others were in Colosimo's boat as it was being towed to a boat landing by a truck driven by Sean Oveson. When Oveson stopped at the landing, Conservation Officer Lloyd Steen, who was standing nearby, approached the boat and asked Colosimo if they had been fishing. Colosimo said they had and discussed the types and amounts of fish they had caught and were transporting. Officer Steen asked to see the fish. Colosimo refused, stating that Officer Steen had stopped the fishing party without reasonable suspicion for doing so and that Officer Steen did not have probable cause to inspect the boat. When Colosimo asked Officer Steen to articulate a reason for stopping and detaining his fishing party, and to explain why he had a right to inspect the boat, Officer Steen replied that he did not need a reason and, because he knew they had fish on board, he had a right to inspect the fish. After a lengthy conversation and Colosimo's continued refusal to allow the inspection, Officer Steen ticketed Colosimo for refusal to allow inspection of a boat. Colosimo and his party then left the scene.

Colosimo was charged with hindering and obstructing an officer in the performance of his official duties, in violation of Minn.Stat. § 97A.251, subds. 1 and 2 (1998), and refusal to allow inspection of a boat, in violation of Minn.Stat. § 97A.251, ***273** subd. 1(3). Colosimo moved to suppress the evidence of his refusal and to dismiss both charges, alleging that the evidence was acquired by Officer Steen's illegal seizure of him.The district court dismissed the obstruction charge, holding that Colosimo acted in good faith to assert his constitutional rights and no physical obstruction occurred, citing *State v. Tomlin*, 622 N.W.2d 546 (Minn.2001). But the court denied the motion as to the refusal charge, finding that Officer Steen's conversation with Colosimo did not constitute a seizure because Oveson had already stopped the truck.

The parties stipulated to the facts in the omnibus hearing transcript. The district court found Colosimo guilty of refusal to allow inspection of a boat. While the district court agreed that Officer Steen could not have stopped Colosimo without reasonable suspicion, it reasoned that Officer Steen had a right to inspect the fish when he approached the stopped vehicle and learned there were fish on board. Colosimo appealed.

ISSUE

Is a boat owner guilty of the crime of refusal to allow inspection of a boat when the conservation officer does not have probable cause to request the inspection?

ANALYSIS

[1][2] Our review of the district court's denial of the motion to dismiss is de novo. *See State v. Linville*, 598 N.W.2d 1, 2 (Minn.App. 1999) (reviewing dismissal for lack of probable cause); *see also State v. Harris*, 590 N.W.2d 90, 98 (Minn.1999) (stating that courts may independently review

the facts and determine whether the district court erred by not suppressing evidence). Whether a statute has been properly construed is a question of law, also subject to de novo review. *State v. Nerz*, 587 N.W.2d 23, 2425 (Minn.1998).

I

Colosimo was found guilty of violating Minn.Stat. § 97A.251, subd. 1(3) (1998), which states:

> A person may not:
> ****
> (3) refuse to allow inspection of a motor vehicle, boat, or other conveyance used while taking or transporting wild animals. "Wild animals" is defined to include "fish."

Minn.Stat. § 97A.015, subd. 55 (1998).

We first address the question of whether the state must prove, as a predicate to the crime of refusal to allow inspection, that the officer had probable cause to request the inspection. Although the description of the crime in Minn.Stat. § 97A.251, subd. 1(3) does not expressly include that predicate, we conclude that it must be implied because of constitutional and other statutory requirements.

Constitutional Requirements

[3] We analyze a conservation officer's request to inspect fish in a boat under the constitutional standards applicable generally to searches and seizures. The Minnesota Supreme Court has consistently held that the Fourth Amendment's prohibition against unreasonable searches and seizures applies to searches made by conservation officers. *State v. Richards*, 284 N.W.2d 549, 551 (Minn.1979); *State v. Sorenson*, 441 N.W.2d 455, 459 (Minn. 1989); see also *State v. Krenz*, 634 N.W.2d 231, 234 (Minn.App.2001) (holding that conservation officer violated the Fourth Amendment when he entered defendant's fish house without consent, a warrant,

probable cause or any articulable basis for suspicion)

***274** Further, we have held that an owner of a vehicle has a reasonable expectation of privacy sufficient for Fourth Amendment protections to attach to the vehicle. See *State v. Nace*, 404 N.W.2d 357, 360-61 (Minn.App.1987), review denied (Minn. June 25, 1987) (stating that an automobile owner's expectation of privacy in an automobile is somewhat less than in a home, but a warrantless search of an automobile still must be supported by probable cause); see *also Carroll v. United States*, 267 U.S. 132, 147-55, 45 S.Ct. 280, 283-86, 69 L.Ed. 543 (1925) (explaining that probable cause is required to search an owner's automobile because of the owner's reasonable expectation of privacy). We see no reason to distinguish between an automobile and a boat, both of which are vehicles that transport people and goods in a regulated environment. [FN 1]

> FN1. Such a distinction is further blurred under our facts, where the boat is being towed by a motor vehicle.

If, under these constitutional standards, a conservation officer must have probable cause to believe that a crime has been committed in order to justify a warrantless search of a boat without the owner's consent, then it follows that any evidence obtained by an inspection of a boat without consent would be subject to suppression on grounds that the officer did not have probable cause to search the boat. That being so, could the legislature constitutionally require a person to consent to a warrantless search of protected property without probable cause, or make it a crime for a person to refuse such consent? Although the narrow words of Minn.Stat. § 97A.251, subd. 1(3), could be read to do just that, when we construe that section to be consistent with the constitution, we conclude that it implies a predicate that the officer requesting inspection has either a search warrant or probable cause to

support the request. Minn.Stat. § 645.17(3) (1998) (providing the presumption that the legislature does not intend to violate the constitution of the United States or of this state).

Other Statutory Requirements

This conclusion, that the crime of refusal to permit inspection of a boat implies the predicate that the officer has a warrant or probable cause to support the request, is reinforced by the statutory provisions that authorize inspections under the game and fish laws. Minn.Stat. § 97A.215 , subd.1(b) (1998), states:

> When an enforcement officer has *probable cause* to believe that wild animals taken or possessed in violation of game and fish laws are present, the officer may:
> (1) enter and inspect any place or vehicle; and
> (2) open and inspect any package or container.
> (Emphasis added.)

Construing the provisions establishing the crime of refusal to allow inspections of a boat, under Minn.Stat. § 97A.251, subd. 1(3), together with the limitations placed on the authority of an enforcement officer to conduct an inspection only upon probable cause, we conclude that a boat owner cannot be convicted of the crime of refusal to allow inspection of a boat unless the state can prove that the officer had probable cause to request that inspection.

II

At oral argument, the state asserted that probable cause was not a necessary predicate to a request to inspect the boat because of the regulated activity exception. Some courts have recognized that a ***275** person engaged in a pervasively regulated activity may have a reduced expectation of privacy and, therefore, certain searches of the place where that activity occurs may not be unreasonable under the constitution, even in the absence of probable cause. *See, e.g.,*

New York v. Burger, 482 U.S. 691, 107 S.Ct. 2636, 96 L.Ed.2d 601 (1987) (holding reasonable warrantless inspections of junkyards because vehicle dismantlers constitute "closely regulated" industry). The state argues that recreational fishing has been regulated by the requirement of a fishing license and by the imposition of specified restrictions.

[4] We have already rejected the state's argument as applied to recreational fishing in Minnesota. *Krenz*, 634 N.W.2d at 236-37 (declining to accept the state's argument that warrantless searches of fish houses are justified to enforce the regulatory scheme for recreational fishing); *see also State v. Larsen*, 637 N.W.2d 315, 321 (Minn.App.2001) ("a citizen accused of stealing ... fish has the same constitutional guarantees of fairness and due process as citizens accused of other crimes"), *review granted* (Minn. Mar. 19, 2002). [FN2] As we said in *Krenz*, warrantless searches conducted to enforce regulatory schemes are only reasonable in the contex of a pervasively regulated business activity, not a personal recreational activity. 634 N.W.2d at 236. *Krenz* dealt with a warrantless search of a fish house and it could be argued that a person in a fish house had a greater expectation of privacy than one in a boat. But the limitation placed by legislature on the authority of an officer to inspect applies equally to a "place" and a "vehicle." Minn.Stat. § 97A.215, subd. 1(b)(1). This effectively establishes that persons in a boat have the same reasonable expectation of privacy. Thus, unless a person is using a boat for a pervasively regulated business activity, the statute requires probable cause to enter and inspect a boat.

> FN2. Other jurisdictions have also rejected such arguments. *See, e.g., People ex rel. Attorney General v. Younger Mun. Judge* 327 Mich. 410, 42 N.W.2d 120, 125 (1950) (rejecting argument that a fishing license is distinguishable from a driver's license); *Sitz v. Dep't of State Police*, 443 Mich.

744, 506 N.W.2d 209, 222 (1993) (rejecting regulatory argument).

The state suggests that this construction of the statute places an unreasonable burden on conservation officers. We acknowledge the difficulty a conservation officer faces in acquiring probable cause for fishing violations that are committed essentially in private. And, while we agree that the analysis of constitutional requirements and the construction of the statute should not simply be mechanistic, we are not persuaded that public policy concerns raised by the state can override otherwise applicable constitutional protections or statutory limitations. Further, we cannot conclude that the legislature has clearly expressed an intent to prefer the enforcement of the fish laws to individual privacy rights. We have required such a clear expression in other licensing contexts.

For example, in *State v. Greyeagle*, 541 N.W.2d 326 (Minn.App.1995), we considered whether the application for and display of a special series license plate, to an owner who has a limited driver's license, implies consent by the driver to stops of the vehicle based solely on the plates, without some independent reasonable suspicion or probable cause. We held that it did not, noting that the statute did not expressly authorize stops based solely on the plates. *Id.* at 328. After *Greyeagle*, the legislature amended the statute to provide that specific authorization. In *State v. Henning*, 644 N.W.2d 500, 503 (Minn.App.2002), we construed the amended statute ***276** to establish the driver's implied consent to stops based solely on the plates.

[5] In contrast here, Minn.Stat. Ch. 97A does not expressly authorize a conservation officer to inspect a boat based solely on the fact that a fishing license is required to take or transport fish, or because there are fish in the boat. To the contrary, the statute conditions the conservation officer's

inspection authority to situations where the officer has "probable cause." Minn.Stat. § 97A.215, subd. 1(b). Thus, as in *Greyeagle*, we need not address the ultimate question, "whether states may statutorily provide that [fishing licenses] be granted on condition that the user enjoys lesser constitutional rights." *See* *Greyeagle*, 541 N.W.2d at 328 n. 3 (stating that the question of an officer's statutory power to make suspicionless stops need not be addressed in the absence of specific statutory authority to do so).

III

The state argues that if probable cause is required, Colosimo's refusal to allow the inspection, together with knowledge that fish were being transported in the boat, gave Officer Steen sufficient probable cause to believe that Colosimo violated fish laws and that there was a fair probability that evidence of the violation was in the boat. Officer Steen testified that in the previous 21 years, no one had ever refused his request to inspect fish in a boat.

[6][7] But the "[Fourth] Amendment gives [the occupant] a constitutional right to refuse to consent to entry and search; where the officer lacks probable cause. *United States v. Prescott*, 581 F.2d 1343, 1350-51 (9th Cir.1978). Passive refusal cannot be a crime, nor can it be evidence of a crime. *Id.* at 1351. Therefore, Colosimo's refusal to allow Officer Steen to inspect the boat did not give Officer Steen probable cause to believe that Colosimo had incriminating evidence on the boat. A contrary conclusion would effectively eliminate the requirement of probable cause from the law because an officer could always avoid the requirement by simply requesting inspection: if the boat owner consents, probable cause would not be required, and if the boat owner refuses, the officer would use that refusal to supply probable cause.

Officer Steen admitted that he had no probable cause to inspect the boat when he approached the boat, and Colosimo's refusal could not give Officer Steen probable cause.

DECISION

We do not address Colosimo's other arguments, concerning whether Officer Steen had reasonable suspicion to effectuate an investigatory stop or to seize the boat or its occupants. The dispositive issue before us, when considering Colosimo's conviction for refusal to allow inspection, is whether Officer Steen was required to have probable cause to request inspection of Colosimo's boat. We hold that Officer Steen was required to have probable cause to request inspection of the boat; that he did not have probable cause to make such request; and that, absent probable cause to request inspection, Colosimo cannot be convicted for refusal to allow inspection.

648 N.W.2d 271

END OF DOCUMENT

APPENDIX C

STATE 0F MINNESOTA **JUDGMENT**

State of Minnesota, petitioner, Appellant vs. John Mark Colosimo, Respondent.

Supreme Court

Appellate Court
980701002181

Trial Court
TX00303509

Pursuant to a decision of Supreme Court duly trade and entered, it is determined and adjudged that the decision of the St. Louis County District Court, Hibbing Criminal Division herein appealed from be and the same hereby is affirmed and judgment is entered accordingly. A certified copy of the entry of judgment and the court's decision is herewith transmitted and made part of the remittitur.

Dated and signed: October 27, 2003

FOR THE COURT

Attest: Frederick K. Grittner
Clerk of the Appellate Courts

By:s/_____
Assistant Clerk

STATE OF MINNESOTA **SUPREME COURT**

TRANSCRIPT OF JUDGMENT

I, Frederick K Grittner, Clerk of the Appellate Courts, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my signature at the Minnesota Judicial Center,

October 27, 2003

In the City of St. Paul October 27, 2003
Dated

Frederick K. Grittner
Clerk of the Appellate Courts

By: s/_____
Assistant Clerk

Supreme Court of Minnesota.

STATE of Minnesota, Petitioner, Appellant,
v.
John Mark COLOSIMO, Respondent.

No. C7-01-2181.

Sept. 25, 2003.

Defendant was convicted in the District Court, St. Louis County, Jeffry S. Rantala, J., of refusal to allow inspection of a boat. Defendant appealed. The Court of Appeals, 648 N.W.2d 271, Hanson, J., reversed. State appealed. The Supreme Court, Gilbert, J., held that: (1) defendant was not "seized" for purposes of the Fourth Amendment when conservation officer approached his open boat while it rested on the trailer of a parked portage truck and asked defendant if he and his group had caught any fish; (2) nonconsensual warrantless search of areas of defendant's open boat where fish were typically transported was not prohibited by Fourth Amendment; and (3) conservation officer was not required to have probable cause to conduct a limited warrantless inspection of defendant's boat.

Reversed.

Page, J., dissented and fled a separate opinion.

Paul H. Anderson, J., concurred in part, dissented in part, and filed a separate opinion.

[1] Arrest 68(4)
35k68(4) Most Cited Cases

Defendant was not "seized" for purposes of the Fourth Amendment when conservation officer approached his open boat while it rested on the trailer of a parked portage truck and asked defendant if he and his group had caught any fish, but rather, the seizure came after defendant's admission to transporting fish and subsequent refusal to allow inspection of the catch or boat where catch was being transported. U.S.C.A. Const.Amend. 4; M.S.A. § 97A.251, subd.1(3).

[2] Searches and Seizures 26
349k26 Most Cited Cases

For a search to be held unconstitutional under the Fourth Amendment the one searched must have had an actual expectation of privacy in the area searched and that expectation of privacy must be one that society is prepared to recognize as reasonable. U.S.C.A. Const.Amend. 4

[3] Fish 16
176k16 Most Cited Cases

Defendant had no reasonable expectation of privacy in the open areas of his boat, and thus nonconsensual warrantless search of areas of defendant's open boat where fish were typically transported was not prohibited by Fourth Amendment; defendant admitted to having been fishing and transporting fish in his boat, and the minimal intrusion involved was markedly less than that occurring when the privacy of the private, home-like dwelling of a fish house was invaded. U.S.C.A. Const.Amend.4; M.S.A. Const. Art. 13, § 12; M.S.A. § 97A.251, subd.1(3).

[4] Criminal Law 1139
110k1139 Most Cited Cases

Courts review questions of statutory interpretation de novo.

[5] Fish 16
176k16 Most Cited Cases

Conservation officer was not required to have probable cause to conduct a limited warrantless inspection of defendant's boat, for purposes of conviction for refusal to allow inspection of a boat; fishing was a largely recreational privilege that anglers chose to engage in with knowledge of the regulations governing their conduct, and an expectation of privacy in all parts of an open boat or other conveyance, admittedly used to transport fish, was not reasonable. U.S.C.A. Const.Amend. 4; M.S.A. § 97A.251, subd.1(3).

***2** *Syllabus by the Court*

A conservation officer approaching an open boat while it rests on the trailer of a parked portage truck and asking the occupants whether they had caught any fish is not a seizure for the purposes of the Fourth Amendment.

When the occupant of an open boat admits to having been fishing and transporting fish in the boat or other conveyance used to transport wild animals, but refuses to present the catch for inspection, a nonconsensual search of the areas of an open boat where fish are typically transported is constitutionally permissible. Refusing to allow such an inspection is a violation of Minn. Stat. § 97A.251, subd. 1(3) (2000).

Mike Hatch, Minnesota Attorney General, St. Paul, MN, Alan L. Mitchell, St. Louis County Attorney, by Jeffrey M. Vlatkovich, Assistant County Attorney, Hibbing, MN, for Appellant.

John M. Colosimo (Pro se), Virginia, MN, for Respondent.

Teresa Nelson, Minnesota Civil Liberties Union, St. Paul, MN, by Howard S. Carp, Volunteer Attorney on Behalf of Minnesota Civil Liberties Union, Minneapolis, MN, for Amici Curiae.

Heard, considered, and decided by the court en banc.

OPINION

GILBERT, Justice.

Respondent John M. Colosimo was convicted for refusal to allow inspection of a boat, Minn.Stat. § 97A.251, subd. 1(3) (2000). Colosimo challenged his conviction arguing he was unlawfully stopped by the conservation officer, the officer did not have probable cause to inspect the boat and the request to inspect the boat was an unlawful seizure. The court of appeals reversed the conviction concluding that the conservation officer was required to have probable cause to request inspection of Colosimo's boat and that because the officer did not have probable cause to request inspection, Colosimo could not be convicted for refusing inspection. We reverse.

Colosimo was on a fishing trip with four other men on Rainy Lake at Kettle Falls in the Voyageur's National Park. On the morning of September 18, 2000, the group stowed their personal belongings on Colosimo's open bow boat in order to make the trip back to the far shore of Lake Namakan where they had left their vehicles. To get from Rainy Lake, where they had been fishing, to Lake Namakan required portage. Colosimo's boat was being trailored by a truck driven by Shawn Obeson, who was employed portaging boats between the two lakes.

Obeson described the boat as a 19- or 20-foot Crestliner fishing boat, which contained the fishing party's luggage and a cooler or two. Obeson testified that he had loaded Colosimo's boat on to his trailer, and portaged the boat, while the entire fishing party rode in the boat. During the portage, as Obeson was about to put the boat in the Lake Namakan side of the portage, he saw Officer Lloyd Steen, a uniformed Department of Natural Resources (DNR) officer, walking towards the truck. Obeson stopped the truck at that point. When asked at Colosimo's trial the reason he stopped, Obeson testified, "well I stopped to unhook John's [Colosimo's] boat there." when asked if Officer Steen did anything to cause Obeson to *3 stop, Obeson testified, "No, he didn't. He didn't stop me."

Officer Steen testified that he knew where the portage truck operator would stop in order to unhook the boat and receive payment for the portage and he waited in that vicinity. Once the operator had stopped the truck to unhook the boat Officer Steen walked up to the boat and struck up a conversation with Colosimo, who was sitting at the steering wheel of the boat. Officer Steen asked if they had caught any fish. Colosimo responded that they had caught some. Officer Steen asked how many they had; Colosimo responded that they had not been fishing that day and had less than their limit. Officer Steen next asked how they had the fish packaged. Colosimo said they had gutted and gilled the fish in accordance with the regulations affecting Rainy Lake.

Officer Steen eventually asked if he could take a look at the fish; Colosimo refused that request. The refusal to allow the inspection of the fish started an argument between the officer and Colosimo, an attorney, over the officer's legal authority to board the boat to inspect the catch. Officer Steen told the portage truck driver not to put the boat in the water. Colosimo

was equally adamant in telling the driver to put the boat into the water.

Realizing that he and Colosimo were at an impasse and fearing that the argument would escalate into a physical confrontation, Officer Steen issued Colosimo a ticket for failing to present wildlife for inspection, Minn.Stat.§ 97A.251, subd. 2, and allowed the group to go along their way. Later, upon reviewing the relevant statutes, Officer Steen sent Colosimo a separate ticket citing him for obstructing an officer in violation of Minn.Stat. § 97A.251, subd. 1, and refusing to allow inspection of a boat being used to transport wild animals, Minn. Stat. § 97A.251, subd. 3.

The parties agreed to a bench trial. A bench trial was held and the court issued findings of fact, conclusions of law, a verdict and memorandum. The district court concluded that the case consisted of two legal issues: first, whether there was a stop, and second, did the officer have the authority to inspect Colosimo's boat once it had been established that Colosimo had been fishing and was transporting fish. The court held that approaching the boat did not amount to a stop, concluding that once the conservation officer determined the individual had engaged in fishing, the officer had the authority to inspect the boat pursuant to Minn.Stat. § 97A.251. The court then found Colosimo guilty of refusal to allow inspection of a boat, Minn.Stat. § 97A.251, subd. 1(3) and assessed a fine of $100, plus a $37 surcharge. Colosimo appealed the conviction to the Minnesota Court of Appeals. The court of appeals reversed the district court, concluding that in order to inspect Colosimo's boat the officer must have probable cause of a violation of a fish or game law. The court held that because the officer did not have authority to inspect the boat, Colosimo could not be convicted for refusal to allow inspection of the boat. *State v. Colosimo*, 648 N.W.2d 271, 276 (Minn.App.2002)

I.

Colosimo contends that Officer Steen stopped his fishing party and that the stop was prohibited by the Fourth Amendment. Colosimo testified that he initially objected to the conservation officer's attempts to converse by asking what the officer's reasonable articulable suspicion for this "stop" was. However, Officer Steen and members of Colosimo's fishing party testified that the conversation began with Officer Steen asking about fish and that Colosimo then stated that the group had been fishing *4 the previous days, and was transporting gutted and gilled fish. The district court found that there "was no stop in the present case" and cited the testimony of the portage operator that he stopped on his own volition, not because of anything that Officer Steen said or did and that an officer's act of approaching a parked vehicle does not constitute a stop for Fourth Amendment purposes.

[1] Colosimo, in his brief to this court, cites *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct.1391, 59 L.Ed.2d 660 (1979), where the United States Supreme Court concluded that random suspicionless stops of drivers violated the Fourth Amendment. However, as the district court properly concluded, the initial interaction between Officer Steen and Colosimo did not amount to a stop. Rather, Officer Steen merely began conversing with Colosimo after the portage truck driver had on his own volition stopped the truck pulling the trailer upon which Colosimo's boat rested. Thus, we are presented with a situation quite distinct from that facing the Court in *Prouse*. Here, Officer Steen walked up to the already stopped boat that rested on the trailer of a parked truck. As the district court found, there is no seizure for Fourth Amendment purposes when an officer merely walks up to a parked motor vehicle and converses with the driver. *See State v. Vohnoutka*, 292 N.W.2d 756 (Minn. 1980); *see also Crawford v. Comm'r of Public Safety*, 441 N.W.2d 837 (Minn.App.1989). Likewise, we hold that Officer Steen

walking up to Colosimo and conversing with him while Colosimo's boat rested on the trailer of a parked portage truck does not amount to a seizure for Fourth Amendment purposes. *See* Matter of Welfare of E.D.J., 502 N.W.2d 779, 782 (Minn.1993) (generally an officer approaching and asking questions of a person standing on a public street or sitting in a parked car is not a seizure).

There may be little doubt that after Colosimo admitted to having been fishing and the fact that he was transporting fish, he was seized by Officer Steen. However, the seizure came after Colosimo's admission to transporting fish and subsequent refusal to allow inspection of the catch or boat where the catch was being transported. At that point the seizure was not suspicionless, but rather, was based on the fact that Colosimo admitted to transporting fish in his boat, but refused to allow inspection of the boat, a violation of Minnesota law. Minn.Stat. § 97A.251, subd. 1(3). Because the parties dispute the constitutionality of this statute, we now turn to that issue.

II.

The remaining question before us is whether Officer Steen had the authority to search Colosimo's open boat for the purpose of inspecting fish that appellant admitted transporting. The fish that were admittedly in Colosimo's possession are subject to an array of rules designed to protect recreational fishing against depletion. These rules include licensing, daily and possession limits, size, species, season, location, bait, preparation and fishing method requirements and many other rules established in numerous statutes and regulations. *See* Minn. R. 6264.0300, subps. 1 & 56 (2001) and Minn.Stat. § 97C (2002).

In a typical Fourth Amendment case, an appellate court has the opportunity to review the specific facts of the challenged search to determine whether the search violated the defendant's Fourth Amendment rights. In this case, no search occurred. Rather, Officer Steen issued a ticket for refusing to allow an inspection of Colosimo's motorboat used to transport.

*5 wild game fish. Thus, we must determine whether a nonconsensual search of the boat, being used to take or transport game fish in the field, could have occurred within the limits imposed by the Fourth Amendment.

[2] The Fourth Amendment prohibits "unreasonable searches and seizures." U.S. Const. amend. IV. For a search to be held unconstitutional under the Fourth Amendment the one searched must have had an "actual expectation of privacy" in the area searched and that expectation of privacy must be "one that society is prepared to recognize as reasonable." *Bond v. United States*, 529 U.S. 334, 338, 120 S.Ct. 1462, 146 L.Ed.2d 365 (2000). In this case, as the district court found, Colosimo refused to allow inspection of his boat out of principle because he "truly believes that the officer could not legally search his boat."

We must decide whether under these circumstances Colosimo had a reasonable expectation of privacy. We have stated the "existence of probable cause is relevant only when a person has demonstrated a legitimate or reasonable expectation of privacy." *State v. Sorenson*, 441 N.W.2d 455, 458, 460 (Minn. 1989) (concluding "the open-fields doctrine permits a conservation officer to enter almost any area in order to enforce the state's game and fish laws"). If Colosimo's expectation of privacy was not reasonable, the Fourth Amendment's prohibition on "unreasonable searches" is not implicated, and his conviction for refusing to allow the search

should be upheld. In order for Colosimo's conviction for refusing to allow inspection of his boat to stand, we must determine whether there are any areas of the open boat where Colosimo's expectation of privacy was unreasonable. If there were areas of Colosimo's boat where an expectation of privacy was not reasonable, the conservation officer had the authority to search those areas, and Colosimo's conviction for preventing the officer from inspecting the open boat stands.

In determining whether Colosimo's expectation of privacy was reasonable, we must consider both the nature of recreational fishing and the characteristics of an open boat, as well as the fact that this request occurred in open season near a game fishing habitat. Recreational fishing is a highly regulated and licensed privilege. Those who choose to apply for this privilege accept the conditions imposed, unique to the sport of game fishing. *See* Minn. Stat. 97A.015, subd. 25. Among those conditions is allowing conservation officers to inspect their catch and boat or other conveyance used to transport fish. Minn.Stat. § 97A.251, subd. 1(2) and (3). The Montana Supreme Court has also recognized this fact:

> In engaging in this highly regulated activity, anglers must assume the burdens of the sport as well as its benefits. Thus, no objectively reasonable expectation of privacy exists when a wildlife enforcement officer checks for hunting and fishing licenses in open season near game habitat, inquires about game taken, and requests to inspect game in the field. In this capacity, game wardens are acting not only as law enforcement officers, but as public trustees protecting and conserving Montana's wildlife and habitat for all of its citizens. *State v. Boyer*, 308 Mont. 276, 42 P.3d 771, 776 (2002).

In *Boyer*, the Montana Supreme Court held that a fisherman had no reasonable expectation of privacy in the fish he possessed. Furthermore, a Montana Fish, Wildlife, and Parks warden was permitted to step on the transom of a fisherman's

boat to inspect the catch contained in the live well of the boat. The court held that ***6** the fisherman had no legitimate expectation of privacy that society was willing to recognize as objectively reasonable in the rear platform of the boat. The live well was open and was subject to plain view by the warden once he stepped on the boat. The Montana court held that the nature of the warden's intrusion was so minimal as not to violate any alleged privacy interest of the fisherman. *Id.* at 779.

The important role fishing plays in the lives of many Minnesotans and the corresponding need for effective regulation to protect the viability of our state's fish and game resources recently inspired an amendment to the Minnesota Constitution. The legislature proposed the amendment in the Spring of 1998. Act of April 20, 1998, ch. 392, § 1, 1998 Minn. Laws 1228. The proposed amendment was then submitted to the citizens of Minnesota, who adopted it in the 1998 general election. The amendment provides, "Hunting and fishing and the taking of game and fish are a valued part of our heritage that shall be forever preserved for the people and shall be managed by law and regulation for the public good." Minn. Const. art. XIII, sec. 12. This provision of the Minnesota Constitution must be considered in our analysis along with the extensive laws and regulations passed to manage fishing for the public good.

[3] This provision of the Minnesota Constitution recognizes the link between enforcement of fishing regulations and the preservation of Minnesota's game and fish resources. We have numerous statutes relating to the taking of game in this state, and numerous regulations implemented by the Department of Natural Resources. *See* Minn.Stat. §§ 97A.011-97A.552; Minn. R. 6262.0100--6262.3300 (2001) (fishing regulations). These laws work in tandem with the constitutional mandate of Minn. Const. art. XIII, sec. 12. When anglers purchase licenses they also routinely receive

pamphlets relating to the limitations and regulations. The widespread knowledge of the restrictions accompanying the privilege of fishing casts doubt on the reasonableness of an expectation of privacy that would allow an angler to refuse inspection of his catch. Those who apply to the state for permission to harvest Minnesota's natural game are on notice that they are subject to such regulations. Colosimo, who encountered the conservation officer at Kettle Falls, a known fishing destination near the Canadian border, acknowledged not only having been fishing on Rainy Lake, a border water extending into Canada, but also admitted to transporting his catch in his open boat. Accordingly, we hold that because Colosimo had no reasonable expectation of privacy, the areas of his open boat or other conveyance used to typically store or transport fish were subject to inspection pursuant to Minn.Stat. § 97A.251, subd.1(3).

Courts around the country have come to similar conclusions when analyzing searches of those choosing to take game. *People v. Perez*, 51 Cal.App.4th 1168, 1177, 59 Cal.Rptr.2d 596 (Cal.Ct.App.1996) ("The high degree of regulation over the privilege of hunting, in turn, reduces a hunter's reasonable expectation of privacy."); *Hamilton v. Myers*, 281 F.3d 520, 532 (6th Cir.2002) ("Everyone who participates in the privilege of hunting has a duty to permit inspections to determine whether they are complying with applicable laws."); *State v. Halverson*, 277 N.W.2d 723, 724-25 S.D.1979) ("Since it is a privilege to hunt wild game a hunter tacitly consents to the inspection of any game animal in his possession when he makes application for and receives a hunting license.").

Our decision is consistent with our recent ruling prohibiting the search of a fish *7 house where the officer lacked probable cause. *State v. Larsen*, 650 N.W.2d 144 (Minn.2002). In *Larsen*, we held as follows:

> We consider the nature of the premise here--a fish house, erected and equipped to protect its occupants from the elements and often providing eating, sleeping, and other facilities--as providing privacy for activities 'recognized and permitted by society.' While clearly not a substitute for one's private dwelling, during the period of occupancy important activities of a personal nature take place. We therefore conclude appellant had a reasonable expectation of privacy in his fish house.
> *Id.* at 149 (internal citation omitted).

The dissent would have us treat an open fishing boat the same as the "private fish house" from *Larsen*. We decline to do so. In stark contrast to *Larsen*, the minimal intrusion involved here is markedly less than that occurring when the privacy of the private, homelike dwelling of a fish house is invaded. Here, we are asked to conclude that an angler has a reasonable expectation of privacy in every area of his open boat, including those areas where fish are normally stored or transported. Under these facts, Colosimo did not have a legitimate expectation of privacy in certain areas of his already stopped open boat, where fish are typically stored or transported.

To conclude otherwise, that police officers require probable cause of any gaming law violation, would prevent the state from meeting its constitutional mandate that it manage and regulate fishing to preserve our natural resources. This is an undeniable fact given that the state would only be able to inspect boats when it observes or has information from a "confidential reliable informant" on the actual catching and keeping of fish in excess of the applicable limits, size, season or species. The idea that officers would be required to personally witness illegal catch activity, coupled with the reality that fishing can take hours or even days, illustrates how absurd it would be to recognize a privacy interest inherent in an angler's take and only then have probable cause

to inspect. Similarly, "informants" would need first-hand knowledge of the violations, as the dissent recognizes, as mere fishing would not constitute probable cause that allows inspection. The only other option would be continued surveillance of one particular angler until a conservation officer had a basis to believe that a law was violated.

The unreasonableness of this expectation can be easily illustrated. Minnesota has specific regulations for the taking of fish on the Minnesota- Canadian boundary waters. Minn. R. 6266.0700. This allows, for example, the taking and daily possession of thirty sunfish per angler. Minn. R. 6266.0200, subd. 2(c). There were five anglers in Colosimo's fishing party. The dissent would force the game officer to have probable cause to believe that more than one hundred and fifty sunfish had been taken before an inspection can be allowed. Walleye fish have a daily possession limit of six fish in the aggregate, in general. Minn. R. 6266.0700, subd. 2(a). The dissent would restrict inspection until the officer had probable cause to believe the party had thirty-one walleye in their possession. We disagree, and again find persuasive the Montana Supreme Court's reasoning in Boyer. The Montana court held that:

> Montana's vast geography, the angler's somewhat uninhibited freedom of movement, and the remoteness from warrant issuing magistrates and law enforcement entities would severely impede game violation investigations. The inevitable result would be the unnecessary depletion of Montana's wildlife and fish, which ***8** we are bound to protect and preserve. We decline to impose this burden.

Boel, 43 P.3d at 776. [FN 1]

> FN 1. The intrusion here does not raise similar concerns of a "roadblock" that we addressed in *Ascher*, where a large number of motor vehicle drivers were stopped on the public highways in the hope of discovering evidence

of alcohol impaired driving by some of them. *Ascher v. Comm'r of Pub. Safety*, 519 N.W.2d 183, 187 (Minn.1994). In contrast, Colosimo, whose boat was being portaged by a third party, had already come to a stop when the exchange with the conservation officer began. The conservation officer who requested to inspect Colosimo's catch knew that Colosimo had been fishing and that he possessed game fish, and that those fish were being transported in the open boat.

Minnesota's 10,000 lakes, along with numerous streams and rivers rival Montana's vast geography and provide anglers largely uninhibited freedom of movement in remote areas in pursuit of our abundant fish resources. In *Prouse*, Justice Blackmun wrote a concurrence joined by Justice Powell where they highlighted the clear difference between the situation in *Prouse* and that present in the sport fishing context:

> I would not regard the present case as a precedent that throws any constitutional shadow upon the necessarily somewhat individualized and perhaps largely random examinations by game wardens in the performance of their duties. In a situation of that type, it seems to me, the Court's balancing process, and the value factors under consideration, would be quite different.

Prouse, 440 U.S. at 659, 99 S.Ct.1391.

III.

Having determined that the Fourth Amendment does not prohibit a limited inspection of Colosimo's open boat, we must determine whether the statute under which Colosimo was convicted, Minn.Stat. § 97A.251, subd. 1(3), requires probable cause in order to undertake a search. The court of appeals read a probable cause requirement into Minn.Stat. § 97A.251, subd.1(3). The statute provides:

A person may not:

(1) intentionally hinder, resist, or obstruct an enforcement officer, agent, or employee of the division in the performance of official duties;

(2) refuse to submit to inspection of firearms while in the field, licenses, or wild animals; or

(3) refuse to allow inspections of a motor vehicle, boat, or other conveyance used while taking or transporting wild animals.

Id.

[4] We review questions of statutory interpretation de novo. *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 209 (Minn.2001). The court of appeals interpreted this statute to require the state to prove, as a predicate to the crime of refusal to allow inspection, that the officer had probable cause of a violation. We disagree. The statute at issue provides a conservation officer the authority to inspect a boat or other conveyance [FN2] used "while taking or transporting wild animals." Minn.Stat. § 97A.215, subd. 1(3). This statute makes no mention of a requirement that the officer have probable cause in order to undertake the inspection. The court of appeals, operating under the belief that attributing meaning to the plain wording of the statute would result in the statute violating the constitution, implied a probable cause requirement in order to uphold the statute. ***9** *State v. Colosimo*, 648 N.W.2d 271, 274 (Minn.App.2002). The court of appeals supported their interpretation by referencing Minn. Stat. § 97A.215, subd. 1(b) (2002) which provides:

> FN2. Conveyance: "A means of carrying or transporting something." See Webster's International Dictionary 499 (3d ed.1993).

When an enforcement officer has probable cause to believe that wild animals taken or possessed in violation of game

and fish laws are present, the officer may:
(1) enter and inspect any place or vehicle; and
(2) open and inspect any package or container.

We decline to interject a probable cause requirement into Minn.Stat. § 97A.251 merely because the legislature in Minn.Stat. § 97A.215, subd. 1(b)(1) granted conservation officers with probable cause the authority to "enter and inspect any place or vehicle."

[5] Our decision in this case does not grant conservation officers power beyond that of other law enforcement officers. [FN3] Rather, the difference between the inspection permitted under the facts of this case and searches impermissible under the Fourth Amendment is that fishing is a largely recreational privilege that anglers choose to engage in with knowledge of the regulations governing their conduct. Our decision merely acknowledges that an expectation of privacy in all parts of an open boat or other conveyance, admittedly used to transport fish, is not reasonable. Therefore, a limited inspection of certain parts of the open boat would not be prohibited under the Fourth Amendment. [FN4] As such, under the facts of this case, it was permissible for the conservation officer to conduct a lawful nonconsensual inspection of the areas of Colosimo's open boat typically used to store or transport fish. By refusing to submit to the officer's lawful request to inspect these areas of his open boat, Colosimo violated Minn.Stat. § 97A.251, subd. 1(3).

> FN3. Minnesota Statutes § 97A.205, which sets forth the powers of game and fish enforcement officers, provides, "Nothing in this section grants an enforcement officer any greater powers than other licensed peace officers."
>
> FN4. Because Colosimo refused *any* search, we do not need to specifically delineate the limits of a legal search of an open boat.

Reversed.

HANSON, J., took no part in the consideration or decision of this case.

PAGE, Justice (dissenting).

> [A]s a general rule, the state, having the power to deny a privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the state in that respect is not unlimited, and one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights. If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution * * * may thus be manipulated out of existence.

Frost v. Railroad Comm'n, 271 U.S. 583, 593-94, 46 S.Ct. 605, 70 L.Ed. 1101 (1926). This means, "the state may not impose upon the permission to take wildlife the condition that the state be allowed to invade the constitutional rights of the individual." *People ex rel. Roth v. Younger*, 327 Mich. 410, 42 N.W.2d 120, 125 (1950); *see also Garrity v. New Jersey*, 385 U.S. 493, 500, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967) (concluding that public employment may not be hinged on the relinquishment of the right of the individual to invoke their Fifth Amendment privilege against ***10** self-incrimination); *Blackburn v. Snow*, 771 F.2d 556, 568 (1st Cir.1985) (stating that it is long settled "that government may not condition access to even a gratuitous benefit or privilege it bestows upon the sacrifice of a constitutional right").

By its decision today, the court permits precisely that which the Supreme Court in *Frost* prohibited--it grants the privilege of taking wildlife conditioned on the infringement of

constitutional rights. By concluding that one who engages in the regulated activity of fishing has no expectation of privacy in the areas of an open boat or other conveyance used to typically store or transport fish, [FN1] the court ensures that every such search will be reasonable, even when based on a conservation officer's whim, thereby making a warrant based on probable cause unnecessary. In the end, because no such warrantless searches will be violative of the Fourth Amendment's and article I, section 10's, protections against unreasonable searches, individuals engaging in or who are believed to have engaged in hunting or fishing will be subject to searches otherwise constitutionally forbidden.

> FN1. While the court's opinion refers to the expectation of privacy in the areas of an open boat or other conveyance used to typically store or transport fish, it does not define or explain what constitutes these areas. Presumably, the court is referring to packages or containers that are present on the boat. Also, presumably, the court fails to define or explain what constitutes these areas because it wants to avoid the probable cause requirements of Minn.Stat. § 97A.215, subd. lb(2). The expansive language in the opinion makes it apparent that a peace officer, whether a police officer or a conservation officer, will be able to search not only open boats, but any boat, car, or truck on the mere hunch that the occupants have engaged in the regulated activity of hunting or fishing.

Under Minnesota law, conservation officers, as licensed peace officers, are the functional equivalent of police officers. See Minn. Stat. § 626.84, subd. 1(c)(1) (2002). As such, the constitutional constraints that limit the ability of a police officer to conduct searches also apply to searches conducted by conservation officers. *See State v. Larsen*, 650 N.W.2d

144, 154 (Minn.2002) (stating that "conservation officers are subject to the same constitutional constraints as other law enforcement officers in the performance of their duties," therefore, any restrictions this court has found applicable to police officers also apply to conservation officers); Minn.Stat. § 626.05, subd. 2 (2002).

Individuals have the right to be free from unreasonable searches under both the United States and Minnesota Constitutions. [FN2] U.S. Const. Amend. IV; Minn. Const. Art. 1, § 10. This right "protects people, and not places," by protecting what an individual seeks "to preserve as private, even in an area accessible to the public." *Katz v. United States*, 389 U.S. 347, 351, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). In order for a person to receive constitutional protection, (1) the search must be of an area in which the individual has an expectation of privacy and (2) the individual's expectation of privacy must be one that is recognized within society as reasonable. ***11** *See Bond v. United States*, 529 U.S. 334, 338, 120 S.Ct. 1462, 146 L.Ed.2d 365 (2000). Generally, searches conducted without prior approval of a magistrate or judge are per se unreasonable, unless they fall within a judicially-recognized exception. *See Coolidge v. New Hampshire*, 403 U.S. 443, 45455, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971).

> FN2. When interpreting a provision of the Minnesota Constitution that contains nearly identical language to a provision in the United States Constitution, decisions from the United States Supreme Court discussing that constitutional provision are "inherently persuasive, although not necessarily compelling." *State v. Wiegand*, 645 N.W.2d 125, 132 (Minn.2002). However, our constitution may not provide an individual with less protection than the United States Constitution, *Coolidge v. New. Hampshire*, 403 U.S. 443, 453, 91

> S.Ct. 2022, 29 L.Ed.2d 564 (1971), although we may construe our constitution to extend greater protections than a comparable provision of the United States Constitution. *Wiegand*, 645 N.W.2d at 132; *State v. Carter*, 596 N.W.2d 654, 656-57 (Minn.1999)

While courts have recognized that the privacy expectation in a moving vehicle, including a boat, is less than that of a home, this does not mean that the Fourth Amendment fails to provide any protection. *See Carroll v. United States*, 267 U.S. 132, 153, 45 S.Ct. 280, 69 L.Ed. 543 (1924) (recognizing that, while the search of a "ship, motor boat, wagon, or automobile" is necessarily different from a search of a "store, dwelling house, or other structure" under the Fourth Amendment, the protections guaranteed in the Fourth Amendment still apply); *United States v. Ross*, 456 U.S. 798, 805-06, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982) (recognizing that Fourth Amendment applies to vessels as well as cars); *Cardwell v. Lewis*, 417 U.S. 583, 590-91, 94 S.Ct. 2464, 41 L.Ed.2d 325 (1974) (noting that, while occupants and their belongings are in plain view and exposed to the public eye and therefore are not protected under the Fourth Amendment, this does not mean that no part of the interior of a motor vehicle is protected or that an individual's right to be free from unreasonable searches and seizures is waived); see also *United States v. Lauchli*, 724 F.2d 1279, 1282 (11th Cir.1984) (applying the vehicle exception to a boat to determine whether the warrantless search was appropriate under the Fourth Amendment); *United States v. Whitaker*, 592 F.2d 826, 828 n. 2 (5th Cir.1979) (recognizing that the Fourth Amendment has long been considered applicable to boats and that there exists an expectation of privacy in a vessel). As we recognized in *State v. Wiegand*, 645 N.W.2d 125 (Minn.2002), " '[a] search, even of [a vehicle], is a substantial invasion of privacy,' " to which Fourth Amendment protections apply. *Id.* at 131 (quoting *United States v. Ortiz*,

422 U.S. 891, 896, 95 S.Ct. 2585, 45 L.Ed.2d 623 (1975)). Because individuals have a diminished expectation of privacy in their vehicles, courts have created and applied an exception to permit warrantless searches so long as the search was "reasonable." *California v. Carney*, 471 U.S. 386, 392-94, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985).

In the context of fishing and hunting, a search is "reasonable" when the conservation officer has probable cause to search arising from a belief that the individual to be searched is engaged in or has very recently engaged in either hunting or fishing and that a violation of the fishing or hunting laws may have occurred. *See Younger*, 42 N.W.2d at 122 (stating that probable cause based on the belief that a lawful act, like fishing or hunting, has been, is being, or in the future will be committed has never rendered a search reasonable under the constitution, and therefore concluding that "probable cause" requires knowledge or belief of an unlawful act). Without such probable cause restrictions, individuals will be subject to searches based on the conservation officer's whim rather than based on actual suspicion that the individual has engaged in conduct that may have violated the state's fishing and hunting laws. *See State v. Henning*, 666 N.W.2d 379, 385 (Minn.2003) (stating that peace officers "should not be *allowed to define the reasonableness of their own conduct"); Delaware v. Prouse*, 440 U.S. 648, 661, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979) (stating that when an official lacks either probable cause to believe that a violation has occurred or other articulable basis upon which a reasonable suspicion may be based before effectuating ***12** a search or seizure "[t]his kind of standardless and unconstrained discretion is the evil the Court has discerned when in previous cases it has insisted that the discretion of the official in the field be circumscribed, at least to some extent"); *Brinegar v. United States*, 338 U.S. 160, 180, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949) (Jackson, J., dissenting), *quoted* in *Ascher v. Comm'r of Public Safety*, 519 N.W.2d 183, 186 n. 1 (Minn. 1994) (stating that

"[u]ncontrolled search and seizure is one of the first and most effective arsenal of every arbitrary government"); *see also* *Ortiz*, 422 U.S. at 896, 95 S.Ct. 2585 (finding that a search is a "substantial invasion of privacy" and, therefore, to protect individual's right to be free from "official arbitrariness," those effectuating the search must have probable cause).

The historic protection of an individual's right to be free from unreasonable searches has been effectively eliminated by today's decision. The court concludes that Colosimo had no reasonable expectation of privacy in areas of his open boat used to transport or store fish [FN3] because of the extensiveness of state regulation of fishing and hunting activities and because recreational fishing is a privilege. That is a rationale this court firmly rejected in *Larsen* less than a year ago. [FN4]

> FN3. Obviously, to the extent that the boat is open and items are in plain view, there is no reasonable expectation of privacy in those items because the individual has not sought to keep them private. The problem is that the court extends this rationale to any place on the boat where fish are typically stored and to items not in plain view. However, the test is whether there are areas in the boat that the individual has sought to keep private, even though the area might otherwise be accessible to the public. *See* *Katz*, 389 U.S. at 351, 88 S.Ct. 507; *see also* *Cardwell*, 417 U.S. at 590-91, 94 S.Ct. 2464 (noting that, while occupants and their belongings are in plain view and exposed to the public eye and therefore are not protected under the Fourth Amendment, this does not mean that no part of the interior of a motor vehicle is protected or that an individual's right to be free from unreasonable searches and seizures is waived).

In failing to define "areas of an open boat or other conveyance used to typically store or transport fish," the court has opened the door to searches of packages and containers present on a boat which are likely to have items that an individual is seeking to keep private. *See Ross*, 456 U.S. at 822-23, 102 S.Ct. 2157 (concluding that "the Fourth Amendment provides protection to the owner of every container that conceals its contents from plain view" unless one of the well-established exceptions apply).

If such containers may be searched without probable cause, what about the same containers found on an enclosed boat when the enclosed boat's occupants are suspected of having been fishing? Whether the boat is open or closed cannot be the determining factor. Moreover, under the court's reasoning, there is no basis for treating them differently.

FN4. The court relies on four cases to support this conclusion. That reliance is misplaced. The first case, *State v. Boyer*, 308 Mont. 276, 42 P.3d 771 (2002), involved a conservation officer who stepped on the transom of a fishing boat, looked into an already opened live well, and discovered a violation of Montana's fishing regulations. *Id.* at 779. The question before the Montana Supreme Court did not turn on the conservation officer's search because the violation was in the officer's plain view and did not require the officer to "conduct a search of the boat, look under the seats, remove or rearrange any personal belongings, or even open the top of the live well." *Id.* (distinguishing a search that required opening the vehicle's door and conducting a search of the interior from just looking in a live well that was already open).

In this case, the conservation officer testified that he could not determine from what he could see on the boat that the party had been fishing or that they had engaged in any violations of the fishing laws. Because all of Colosimo's belongings were packed, for the conservation officer to inspect Colosimo's catch, personal belongings would have needed to be rearranged, and coolers or live wells would have had to be opened, all actions that the *Boyer* court indicated would have required probable cause to conduct a search.

The court's reliance on *People v. Perez*, 51, Cal.App.4th 1168, 59 Cal.Rptr.2d 596 (Cal.Ct.App.1996), and *State v. Halverson*, 277 N.W.2d 723 (S.D.1979), is also misplaced as support because these two cases involved searches that arose out of the use of fish and game checkpoints, which are impermissible under the Minnesota Constitution. *See Ascher*, 519 N.W.2d at 187 (concluding that sobriety checkpoints violate the Minnesota Constitution, which requires the police to have an objective individualized articulable suspicion of criminal wrongdoing before subjecting a driver to an investigative stop). The final case, *Hamilton v. Myers*, 281 F.3d 520 (6th Cir.2002), justified a warrantless search and seizure based on the idea that fishing and hunting are regulated activities, a concept that, as noted, this court soundly rejected in *Larsen*. *Larsen*, 650 N.W.2d at 152-53 (concluding that fishing is not comparable to "running an automobile junkyard business, operating a licensed gun dealership, or engaging in the sale of alcoholic beverages for the purpose of the closely regulated industry exception"). As none of these cases provide any legal support under Minnesota law, I can only conclude that the court's decision is based on the exercise of its will.

*13 In *Larsen*, we recognized that this state's fish and game rules and regulations were no more pervasive or comprehensive than the state's traffic rules and regulations. *Id.* at 153. We noted that the state's interest in protecting and regulating wildlife was less than its interest in deterring drunk driving, which we have concluded does not outweigh the privacy expectations of a motor vehicle occupant. *Id. (relying on Ascher*, 519 N.W.2d 183). If, in the face of extensive regulation, the search of a motor vehicle may "not be initiated without at least a reasonable articulable suspicion of unlawful conduct," *Larsen*, 650 N.W.2d at 153, then the search of a fishing boat should not be treated any differently. As we noted recently, "[w]e have never before simply allowed the ends to justify the means when the means void our citizens' constitutional protections." *See Henning*, 666 N.W.2d at 386.

Today's decision effectively overturns *Larsen*. In doing so, the court implicitly concludes that the state's interest in protecting and regulating its wildlife resource is more important than its interest in protecting human life by deterring drunk driving. *See Ascher*, 519 N.W.2d at 186-87 (recognizing that, although a substantial portion of the society would agree that a sobriety checkpoint was a permissible way to eliminate drunk driving, suspicionless stops still violated our constitutional requirements even though the searches were only minimally intrusive). In its breadth, the court's decision appears to go so far as to permit any peace officer to search any vehicle based on the officer's mere suspicion that the occupants have engaged in the regulated activity of hunting or fishing. This decision turns our court's search and seizure law on its head.

The result is that individuals may be stopped on numerous occasions without a reasonable suspicion of any criminal activity merely because a conservation officer believes that

the individuals have been engaged in the regulated activities of hunting or fishing. The court's interpretation "eliminate[s] the constitutional safeguard requiring an officer to have reasonable articulable suspicion of criminal activity before stopping [an individual], but provides no substitute to protect [individuals who appear to have engaged in the regulated activity] from repeated stops at the unchecked discretion of [peace] officers." *Henning*, 666 N.W.2d at 385; *see* *Prouse*, 440 U.S. at 660, 99 S.Ct. 1391 ("To insist neither upon an appropriate factual basis for suspicion directed at a particular [motor vehicle] nor upon some other substantial and objective standard or rule to govern the exercise of discretion 'would invite intrusions upon constitutionally guaranteed ***14** rights based on nothing more substantial than inarticulate hunches.'") (citation omitted).

The court attempts to justify its result by relying on the concurrence in *Prouse*, which states in part, "I would not regard the present case as a precedent that throws any constitutional shadow upon the necessarily somewhat individualized and perhaps largely random examinations by game wardens in their performance of their duties." *Prouse*, 440 U.S. at 664, 99 S.Ct. 1391 (Blackman, J., concurring). However, in its desire to find some case to support its untenable position, [FN5] the court ***15** ignores the clear language in the *Prouse* majority: "There are certain 'relatively unique circumstances' in which consent to regulatory restrictions is presumptively concurrent with participation in the regulated enterprise. *Otherwise regulatory inspections unaccompanied by any quantum of individualized articulable suspicion must be undertaken pursuant to previously specified 'neutral criteria.'* " *Prouse*, 440 U.S. at 662, 99 S.Ct. 1391 (citation omitted) (emphasis added). This language makes clear that the Court is drawing a distinction between those regulated industries for which the "closely regulated industry exception" is applicable and every other regulated activity, like driving, for which "some quantum of individualized

suspicion" is required to ensure that an individual's reasonable expectation of privacy is protected. *See id.* at 654-55, 99 S.Ct. 1391. Because, in Minnesota, this court has explicitly excluded recreational fishing from the "closely regulated industry exception" to probable cause requirements, the result is clear. *See Larsen*, 650 N.W.2d at 152-53 ("We do not perceive recreational * * * fishing * * * comparable to running an automobile junkyard business, operating a licensed gun dealership, or engaging in the sale of alcoholic beverages for purposes of the closely regulated industry exception."). Gaming and fishing "regulatory inspections unaccompanied by any quantum of individualized articulable suspicion must be undertaken pursuant to previously specified 'neutral criteria.' " *Prouse*, 440 U.S. at 662, 99 S.Ct. 1391; *Brown v. Texas*, 443 U.S. 47, 51, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979) ("[T]he Fourth Amendment requires that a seizure must be based on specific, objective facts indicating that society's legitimate interests require the seizure of the particular individual, or that the seizure must be carried out pursuant to a plan embodying explicit neutral limitations on the conduct of individual officers."). Because in this case the conservation officer did not follow any "previously specified 'neutral criteria,' " but was merely acting on his "inarticulable hunch," any resulting search would violate the constitution.

> FN5. As noted previously, *Boyer* did not answer the question of whether the search of a fishing boat for fishing and gaming violations would require probable cause because the Montana Supreme Court found that there was a reasonable suspicion to effectuate the stop and that once stopped the fishing violations were in plain view, thus no search was required. 42 P.3d at 778-79. *Boyer* is not the only court to require either some objective, articulable basis upon which to justify violating an individual's right to privacy or a "neutral criteria" to constrain the officer's unbridled discretion. *See Prouse*, 440 U.S. at 662, 99 S.Ct. 1391. Rather, a

review of case law across the country reveals that this court's decision allowing searches and seizures to be conducted based on an officer's whim is contrary to the majority of cases deciding whether a conservation officer's search or seizure of an individual violates constitutional protections. *See* United States v. Munoz, 701 F.2d 1293, 1300-01 (9th. Cir.1983) (concluding that roving stops by conservation officers to check for compliance with hunting regulations without any founded suspicion violates an individual's Fourth Amendment rights to be free from unreasonable searches and seizures); *People v. Coca*, 829 P.2d 3851 387 (Colo. 1992) (stating that when the conservation officers had no reason to believe that the vehicle had been involved in hunting or was in violation of the state's wildlife laws "[t]he conduct in question parallels that condemned in *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979), in that the * * * vehicle was stopped merely to see if it had been involved in the commission of a hunting infraction. Nothing that was known by the wildlife officers provided them with a reason to believe that a violation of the wildlife laws was occurring, had occurred, or was about to occur."); *Hill v. State*, 238 So.2d 608, 611 (Fla.1970) (stating that the authority to search a boat for violations of the conservation laws is bound by the requirement that the conservation officer have probable cause to believe that a conversation law violation has occurred); *People v. Levens*, 306 Ill.App.3d 230, 239 Ill.Dec. 425, 713 N.E.2d 1275, 1277-78 (1999) ("[A] conservation officer may not stop a motorist if the officer merely believes that the motorist is currently or was very recently engaged in lawful hunting. Because a traffic stop is a greater intrusion than a brief detention in the field, we require that an officer must reasonably believe that a motorist's hunting is illegal before the officer may make a valid stop." 'Reason to believe' is

probable cause to search which arises from indicia that the person is a hunter who is immediately or was very recently engaged in hunting."); *State v. Keehner* 425 N.W.2d 41, 45 (Iowa 1988) (upholding a stop to check for hunting licenses because the stop was designed "not to commit the seizure to the unfettered discretion of the officer: In order to be stopped, the individual must first be engaged in an activity which may be reasonably interpreted as 'hunting.' "); *Drane v. State*, 493 So.2d 294, 297-98 (Miss.1986) (allowing the use of roadblocks or checkpoint stops in game areas to stop individuals as part of scheme to manage wildlife resources, but requiring the conservation officer to have probable cause to believe that a violation of the hunting and gaming laws has occurred before a search of the contents of a boat, car, or other vehicle may be conducted); *State v. Creech*, 111 N.M. 490, 806 P.2d 1080, 1083 (Ct.App. 1991) (noting that, while the concurrence in *Prouse* discussed a potentially different standard for conservation officers conducting random stops, so long as reasonable suspicion is not present "the stop must 'be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers' ") (quoting *Brown v. Texas*, 443 U.S. 47, 51, 99 5.Ct. 2637, 61 L.Ed.2d 357 (1979)); *State v. Tourtillott*, 289 Or. 845, 618 P.2d 423, 430 (1980) (upholding a wildlife roadblock stop because "[t]here was no exercise of discretion in the sense that the policeman would pull over any vehicle based upon a 'hunch' "); *Hughes v. State*, 195 Tenn. 290, 259 S.W.2d 527, 528 (1953) (holding that, while a search and inspection may be done without a warrant, this power does not mean that a search may be conducted at "*at any time or place* after the privilege has been exercised, such as searching the premises and person of the accused days after the hunt is over"); *State v. Legg*, 207 W.Va. 686, 536 S.E.2d 110, 117 (2000) (concluding that random stops by

conservation officers to search for violations of hunting laws without an articulable, reasonable suspicion constitutes "[s]uch unbridled use of authority by a law enforcement officer [which] is precisely what the State and Federal constitutions are intended to prohibit"); *State v. Flanagan*, 251 Wis. 517, 29 N.W.2d 771, 773 (1947) (upholding a search and seizure by a conservation officer who had probable cause to believe that a violation of the gaming laws had occurred)

The presence of extensive regulations does not, as the court concludes, result in the elimination of an expectation of privacy. *See* *Prouse*, 440 U.S. at 662, 99 S.Ct. 1391 ("The 'grave danger' of abuse of discretion does not disappear simply because the automobile is subject to state regulation resulting in numerous instances of police-citizen contact * * * 'if the government intrudes * * * the privacy interest suffers whether the government's motivation is to investigate violations of criminal laws or breaches of other statutory or regulatory standards.' ") (citations omitted). At most, it is one ground for deciding whether the vehicle exception to the Fourth Amendment is applicable to boats. *See* *Carney*, 471 U.S. at 394, 105 S.Ct. 2066 (concluding that vehicles have a reduced expectation of privacy warranting the vehicle ***16** exception because they are readily mobile and because of the pervasive regulations governing their use). Indeed, even if the vehicle exception is applicable to boats, and I believe it is, a warrantless search of a fishing boat still needs to be based on probable cause before a search may be upheld. *Id.* at 392, 105 S.Ct. 2066 (concluding that, when "pervasive schemes of regulation, which necessarily lead to reduced expectations of privacy, and the exigencies attendant to ready mobility justify searches without prior recourse to the authority of a magistrate *so long as the overriding standard of probable cause is met* ") (emphasis added).

Requiring a conservation officer to have probable cause before conducting a warrantless search of a boat is consistent with the statutory scheme governing the conduct of conservation officers in the field. The legislature does not have the power to "redefine the constitutional parameters of [peace officer] conduct," and this court has no authority to ignore clear and unambiguous legislative pronouncements when trying to ascertain the intent of the legislature. *Henning*, 666 N.W.2d at 385. The presumption is that the legislature did not intend an absurd or unreasonable result and that the legislature intends the entire statute to be effective and certain. Minn.Stat. § 645.17 (2002). Here, Minnesota Statutes § 97A.215, subdivision 1b (2002), provides that a conservation officer must have probable cause to believe that wild animals were taken or possessed in violation of the game and fish laws before he or she is authorized to conduct an inspection of a vehicle, package, or container that may contain game or fish. Minnesota Statutes § 97A.251 (2002) describes those actions that are prohibited by a licensee and specifies those that will be criminal violations and those that are subject to civil action. It does not, contrary to the court's reading, grant a conservation officer authority to conduct an inspection of a vehicle merely upon the officer's belief that the licensee has engaged in fishing or hunting. Rather, the "inspection referenced in Minn.Stat. § 97A.251, subd. 1(3), is the inspection authorized under Minn.Stat. § 97A.215, subd. 1b. To read these statutes in the way the court does produces an absurd result. On one hand, the enforcement officer cannot conduct an inspection without probable cause; on the other hand, a person can be criminally penalized for refusing to allow an inspection that the enforcement officer has no statutory authority to conduct in the first instance.

To the extent that the "inspection" referenced in section 97A.251, subdivision 1(3), is not the "inspection" authorized under section 97A.215, subdivision lb, the court's expansion of the scope of the inspection to include "areas of an open boat or other conveyance used to typically store or transport fish" goes well beyond that permitted by the express language of section 97A.251, subdivision 1(3). Subdivision 1(3) of section 97A.251 makes it unlawful for a person to "refuse to allow inspection of a *motor vehicle, boat, or other conveyance* used while taking or transporting wild animals" (emphasis added). The statute does not contain any language authorizing the "inspection" of packages or containers. Thus, the plain language of the statute does not make it unlawful to refuse to allow an inspection of such packages or containers. If the legislature intended for it to be unlawful for a person to refuse to allow inspection of packages or containers found on a boat, it clearly knew how to and could have done so by using the language of section 97A.215, subdivision lb. The legislature, however, did not. Here, there is no evidence in the record that supports a conclusion that probable cause existed; all the evidence shows that the conservation ***17** officer searched Colosimo's boat on a whim. [FN6] *See In re Welfare of D.A.G.*, 484 N.W.2d 787, 792 (Minn.1992) ("Although there are situations where we must entrust the police * * * and allow them to conduct a warrantless search, they cannot assume this role in every instance or at their own whim.").

> FN6. The conservation officer admitted that he had no reason to suspect or believe that Colosimo was engaged in conduct that had violated the fishing and hunting laws or that he had contraband in his vehicle. There were no visual signs, in terms of fishing poles, coolers, or other fishing gear, which would indicate that Colosimo's party had been fishing that day or any other. According to the conservation officer, the only reason he approached

> Colosimo's boat was because five men were sitting in a boat, which led him to conclude that they were a fishing party. As the opinion authored by Justice Gilbert so aptly recognized in *Henning*, it is a violation of our constitution for officers to seize individuals based on their "unchecked discretion," even when only a small number of individuals are affected and even when the state has given these individuals permission to engage in the regulated activity. Here, the officer acknowledged that had there been children or women in Colosimo's boat he would not have approached the boat, let alone seized its passengers. It is this type of constitutional infringement that this court has sought to prevent in *Ascher*, *Henning*, and *Larsen*, yet in this case the court is willing to ignore those same constitutional protections.
>
> The court attempts to justify its decision further by relying on the conservation officer's knowledge after he approached Colosimo's boat. However, Colosimo's responses to the conservation officer's questions did not create probable cause or even reasonable suspicion of criminal activity justifying the conservation officer's request that he be able to search the boat. All that was elicited was that Colosimo was engaged in lawful conduct before being approached by the conservation officer, which is not enough to warrant a search. See *State v. Harris*, 265 Minn. 260, 268, 121 N.W.2d 327, 333 (1963) (concluding that "[s]earches which are 'exploratory and general and made solely to find evidence of * * * guilt' are invalid" when there is no indication that a crime has been or is about to be committed) (citations omitted).

While a probable cause requirement might make fishing violations more difficult to detect, as we concluded in *Larsen*, the "ease in enforcing the law has never been a sufficient justification for government intrusion."650 N.W.2d at 150 n 5.

The court claims that requiring probable cause in order to search a boat "would prevent the state from meeting its constitutional mandate that it manage and regulate fishing to preserve our natural resources." However, the state offered no evidence to show that this was the only effective enforcement measure and in fact conceded that requiring conservation officers to comply with the constitutional requirements of probable cause "[d]oes not pose any kind of direct threat to fish, per se. The resource itself can be protected even if individual harvest behaviors cannot be regulated." Without empirical evidence to the contrary, there is no way to reach the conclusion that the random seizure of an individual on the mere, belief that the individual has engaged in either fishing or gaming is at all an effective means of promoting resource preservation. *See* *Prouse*, 440 U.S. at 661, 99 S.Ct. 1391. (requiring more than a "marginal contribution" to prevent the violation to justify subjecting individuals to seizures based on an officer's whim). As the Court stated in *Prouse*, "Given the alternative mechanisms available, both those in use and those that might be adopted, we are unconvinced that the incremental contribution to [gaming and fishing resource management] justifies the practice under the Fourth Amendment." 440 U.S. at 659, 99 S.Ct. 1391.

Rather than requiring the state to properly manage Minnesota's wildlife resources, the court has instead decided to grant the state the power to compel the relinquishment of an individual's constitutional ***18** right not only to be free from unreasonable searches, but also the freedom to assert one's constitutional right without fear of criminal punishment. By allowing Colosimo's passive refusal to consent to the search of his boat to be used as the basis for establishing one of the necessary elements to prove a violation of Minn.Stat. § 97A.251, subd. 1, the court renders section 97A.251, subdivision 1, unconstitutional and Colosimo's conviction invalid. *See* *District of Columbia v. Little*, 339 U.S. 1, 7, 70 S.Ct. 468, 94 L.Ed. 599 (1950) (concluding that under no

circumstances is passive refusal to consent to a search ever to be treated as evidence of a crime); *United States v. Prescott*, 581 F.2d 1343, 1351 (9th Cir.1978) (stating that "[o]ne cannot be penalized for asserting this right, regardless of one's motivation. Just as a criminal suspect may validly invoke his Fifth Amendment privilege in an effort to shield himself from liability, so may one withhold consent to a warrantless search, even though one's purpose be to conceal evidence of wrongdoing.") (citations omitted); *United States v. Alexander*, 835 F.2d 1406, 1409 n. 3 (11th Cir.1988) (concluding that a defendant's refusal to consent to a search cannot establish probable cause upon which to obtain a warrant to conduct the search). "If the government [can] use such a refusal against the citizen, an unfair and impermissible burden would be placed upon the assertion of a constitutional right and future consents would not be 'freely and voluntarily given.' " *Prescott*, 581 F.2d at 1351 (citation omitted).

In upholding Colosimo's conviction, the court forces individuals to choose between waiving their constitutional right to be free from unreasonable searches in exchange for the "privilege" of hunting, fishing, trapping, or possessing wildlife. If an individual consents to a conservation officer's requested search, that individual waives the ability to later object to the search. *See State v. Harris*, 265 Minn. 260, 269, 121 N.W.2d 327, 334, (1963). If the individual objects to the search, then under the court's interpretation, irrespective of whether the sought after search would violate the Fourth Amendment, that individual has violated Minn.Stat. § 97A.251 and may be charged with a criminal offense. *See* Minn. Stat. § 97A.251.

Today's sweeping decision holding that there is no expectation of privacy in areas of an open boat where fish are typically stored overturns recent precedent and eviscerates the constitutional protection against unreasonable searches. Because both conservation officers and police officers are

bound as peace officers by the same constitutional constraints, the court's decision has now opened the door for warrantless searches by any peace officer upon the mere suspicion that an individual is, has been, or will in the future engage in hunting or fishing. As the Court said in *Frost*, "It is inconceivable that guaranties embedded in the Constitution * * * may thus be manipulated out of existence." 271 U.S. at 593-94, 46 S.Ct. 605.

Therefore, I respectfully dissent.

ANDERSON, PAUL H., Justice (concurring in part and dissenting in part).

I concur in part and dissent in part. I concur in the majority's conclusion that Officer Steen had the right to inspect the open sections of Colosimo's fishing boat and that Colosimo prevented Steen from doing so; therefore, Steen was justified in issuing Colosimo a citation for violating Minn.Stat. § 97A.251, subd. 1(3). But, unlike the majority, I would end the analysis at this point. The majority goes beyond what is necessary to decide this case when it holds that Steen had the right to inspect any "other conveyance" used by Colosimo to transport fish.

***19** While the record is unclear as to why and how Colosimo's boat came to a stop at the portage, once it did stop, Steen engaged in conversation with Colosimo, and Colosimo admitted to Steen that his party had been fishing and that the party had fish on board the boat. While the accounts vary as to exactly how Steen then phrased his request to inspect Colosimo's boat, it is undisputed that Steen made numerous requests, all of which Colosimo adamantly refused. Accounts of the demeanor of the parties also vary,

but one or the other or both of the men were concerned enough about any escalation in the standoff such that Steen, without making any attempt to look in the open sections of the boat, issued Colosimo a citation for violating Minn.Stat. § 97A.251, subd. 1(3). Colosimo then accepted the citation without further ado.

As a fisherman in an open boat who admitted he had been fishing, Colosimo had no reasonable expectation of privacy to the open sections of his boat even though having an officer look into those sections of the boat is intrusive to some degree. Colosimo improperly refused and hindered Steen when he prevented Steen from conducting an inspection of the open sections of the boat. Accordingly, Colosimo violated Minnesota law, and his conviction by the district court should be affirmed.

Affirming Colosimo's conviction on this basis is sufficient to resolve the case before us. Nevertheless, the majority expands its holding to include any "other conveyance" used to transport fish. This overly broad holding is both unnecessary and inadvisable. Steen was prevented from getting anywhere close to an attempt to search any "other conveyance" used by Colosimo to transport fish, and we do not know what other conveyance, if any, Steen sought to inspect. In the context of the case we have before us today, it is difficult to ascertain with any degree of certainty what other conveyances are subject to a search. Therefore, we should leave to another day the resolution of the question of what right, if any, a conservation officer has to inspect more than the open sections of a fisherman's boat.